UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

STATE OF INDIANA,	)
	)
Plaintiff,	)
	)
V.	)
	)
GUIDE CORPORATION and	)
CROWN EG, INCORPORATED	)
d/b/a CROWN ENVIRONMENTAL GROUP,	)
	)
Defendants.	)

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

The State of Indiana, through the Indiana Department of Environmental Management ("IDEM") and the Indiana Department of Natural Resources ("DNR"), brings this complaint against Defendants Guide Corporation ("Guide"), and Crown EG, Incorporated (d/b/a Crown Environmental Group) ("Crown Environmental"), and alleges as follows:

Introduction

1. This lawsuit arises from one of the most significant fish kills to occur in Indiana.

2. Guide Corporation's use and discharge of thousands of gallons of toxic chemicals over a period of approximately ten (10) days, proximately caused the death of more than 117 tons of fish along more than fifty (50) miles of the White River, from the City of Anderson past downtown Indianapolis, Indiana.

The White River

3. The White River originates in Randolph County, Indiana and its water comes from ground water, rain, and melted snow and ice from Northeast and Central Indiana.

4. From Randolph County, the White River proceeds southwest traveling through the heart of Central Indiana on its way to meet the Wabash River. The Wabash River flows into the Ohio River, then continues to travel south and converges with the Mississippi River, which eventually empties into the Gulf of Mexico.

5. As the White River flows past the City of Anderson, it passes various landmarks on its way toward Indianapolis. The White River flows past the Strawtown boat ramp, the historic Potter's Bridge in Hamilton County, Schwartz's bait shop in Noblesville, Broad Ripple Park, the Monon Trail, Holliday Park, the walkways near Butler University and the Indianapolis Greenway System, the White River State Park, and the Indianapolis Zoo. People walking, jogging, biking, fishing, canoeing, boating, and driving-by all enjoy the River's beauty as it meanders along its winding path through Central Indiana.

6. The White River serves as a primary source of drinking water for the Indianapolis metropolitan community.

7. Prior to the fish kill, numerous species of fish inhabited the waters of the White River between the City of Anderson and Indianapolis, including smallmouth bass, bluegill, crappies, perch, sunfish, shad, catfish, and carp among others.

8. In total, Guide's discharge killed more than 117 tons, or 234,000 pounds, of fish. It will require years to fully restore the most devastated areas of the White River.

9. This lawsuit is brought against the Defendants for violations of state and federal law. This action includes claims against the Defendants pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*; the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; the Indiana Emergency Assistance Law, Indiana Code § 13-14-10

et seq.; the Indiana Environmental Management Act, Indiana Code § 13-18 *et seq*.; the Indiana Hazardous Response Trust Fund Act, Indiana Code § 13-25 *et seq*.; the Indiana Fish and Wildlife Act, Indiana Code § 14-22-10-6; and other Indiana common law and statutory claims, including nuisance, negligence and trespass. The State of Indiana seeks injunctive relief, the assessment of civil penalties and damages against the Defendants for violations of the above-referenced statutes and the common law resulting from the discharge of pollutants to the Anderson Publicly Owned Treatment Works ("Anderson POTW") and the White River. This civil action seeks to compel the Defendants to remediate and restore the White River, including the fish and other aquatic life killed through Defendants' pollution, and to compensate the State of Indiana for the loss of use of these natural resources, all costs associated with the investigation, and to cease and desist from further violations of State and Federal laws.

Jurisdiction and Venue

10. This Court has jurisdiction over the State of Indiana's claims pursuant to Sections 311(f), 321(n), and 505 of the Clean Water Act ("Clean Water Act"), 33 U.S.C. §§ 1321(f), 1321(n), and 1365, and pursuant to Sections 107 and 113(b) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. § 1331. This Court has personal jurisdiction over Defendants because they have a place of business in Indiana and/or do business in this district.

11. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. §§ 1366 and 1367, and under the doctrine of pendant jurisdiction as the state claims are so related to the federal claims as to form part of the same case or controversy.

12. Venue is proper in this district pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), Section 113 of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b),

because the Defendant Guide is located in this district and the cause of action arose from the releases of hazardous substances and other pollutants resulting in damages in this district.

The Defendants

13. Defendant Guide is a Delaware corporation with its principal place of business in Anderson, Indiana.

14. Defendant Crown Environmental is an Ohio corporation with its principal place of business in Dayton, Ohio.

15. Each of the Defendants is a "person" as defined at Section 502(5) of the Clean Water Act, 33 U.S.C., § 1362(5), Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), Ind. Code § 13-11-2-158(a), and Ind. Code § 14-8-2-202.

The Background of the Anderson Plant

16. Prior to September 29, 1998, General Motors Corporation ("GM") owned and operated a manufacturing plant in Anderson, Indiana, which was known as its "Anderson Plant."

17. On September 29, 1998, GM entered into an asset exchange agreement in which it leased the Anderson Plant's equipment and facilities for Guide's use. The "Anderson Plant" hereafter means the facility located at 2915 Pendleton Avenue, Anderson, Indiana, without respect to ownership by GM or Guide.

18. The Anderson Plant has manufactured automotive head light and tail light assemblies since 1929.

19. As part of its manufacturing process, the Anderson Plant plated metals onto plastics parts producing the chrome finish to various head light and tail light assemblies.

20. Approximately thirty (30) years ago, GM built a wastewater treatment plant for the Anderson Plant in order to treat the wastewater generated by its plating process.

21. The Anderson Plant's wastewater treatment plant contains five (5) treatment tanks, three (3) sludge holding tanks, a blend tank, and a clarifier. The treatment tanks vary in capacity and have the ability to hold batches of wastewater between 155,000 and 175,000 gallons.

22. GM was required to pretreat its wastewater to make sure that the wastewater it discharged to the Anderson POTW met certain limits as required by GM's Wastewater Discharge Permit.

23. The Anderson Plant's wastewater flows directly to the Anderson POTW and ultimately to the White River.

24. Because Guide was going to be operating GM's wastewater treatment plant, the Anderson Water Pollution Control requested Guide to submit an application for a Wastewater Discharge Permit. On October 2, 1998, Guide submitted an application for a Wastewater Discharge Permit ("Guide's Wastewater Discharge Permit"), a true and accurate copy of which is attached as Exhibit 1.

25. On November 1, 1998, the Anderson Board of Public Works issued Guide a Wastewater Discharge Permit, a true and accurate copy of which is attached as Exhibit 2.

The Typical Treatment of Wastewater While the Plating Line Was Operational

26. Since at least 1990, while the Anderson Plant's plating line was operational, the wastewater treatment plant treated either one or two "batches" of wastewater per day.

27. A "batch" of wastewater meant enough wastewater to fill a treatment tank and typically meant between 145,000 and 175,000 gallons of wastewater.

28. The operation of the wastewater treatment plant was generally carried out by three (3) people - - an operator, a supervisor, and a pipefitter.

29. The operator's duties included, but were not limited to, taking a sample of the wastewater to be treated, analyzing the wastewater sample for pH and hexavalent chrome, performing a jar test on the sample to determine the proper portions, or amounts, of various chemicals needed to treat the wastewater to comply with Guide's Wastewater Discharge Permit, setting valves and pumps to pump the chemicals to the treatment tank, taking additional samples to monitor the treatment process, and recording the treatment process, including the analytical results, times of sampling and treatment, and chemicals used, in what was known as a "Wastewater Treatment Log."

30. The supervisor's duties included, but were not limited to, analyzing the sample taken by the operator for the presence and concentration of copper, nickel, and chrome in the wastewater, working with the operator to determine the proper amount of chemicals to be added to treat the wastewater, ordering chemicals, supervising the treatment process of the wastewater, determining when the wastewater met the limits set forth in the Wastewater Discharge Permit, and recording in two (2) separate log books: (i) the chemicals used to treat each batch of wastewater; and (ii) the analytical results, measuring the concentrations of copper, nickel, and chrome in the wastewater.

31. The pipefitter's duties included, but were not limited to, making sure that an adequate supply of chemicals existed, pumping the wastewater from the treatment tanks to the blend tank and then the clarifier, and maintaining the equipment at the wastewater treatment plant.

32. The Anderson Plant's wastewater treatment plant treated batches of wastewater through the use of a hydroxide precipitation process in which it would adjust the pH of the wastewater, add calcium chloride to reduce the effects of chelating agents in the wastewater, and add sodium hydroxide to cause the metals present in the wastewater to coagulate to form flocs.

The operator added a metal polishing agent as a polisher to the batch of wastewater to further precipitate, or drop-out, the metals in the wastewater. Polymers were also added near the end of the treatment process.

33. The Anderson Plant's wastewater treatment plant has used two (2) metal polishing agents since 1990. During or after 1990, the Anderson Plant used GCT 200, a product distributed by Utility Chemical, Inc. ("Utility Chemical"). Sometime after the Anderson Plant stopped using GCT 200, it started using HMP 2000, a product distributed by Ulrich Chemical, located in Indianapolis, Indiana ("Ulrich Chemical"). Both products were manufactured by Buckman Laboratories, Inc., located in Memphis, Tennessee ("Buckman").

34. In 1999, the Anderson Plant's wastewater treatment plant was using HMP 2000. The active ingredient in HMP 2000 is sodium dimethyldithiocarbamate ("SDDC"). SDDC is highly toxic to fish and other aquatic biota and to the biological treatment system used by the Anderson POTW for the treatment of raw wastewater, including ammonia.

35. Buckman sold its product containing the active ingredient SDDC to Ulrich Chemical under the trade name "Namet."

36. Ulrich Chemical sold Buckman's Namet product to the Anderson Plant under the trade name "HMP 2000." On information and belief, Ulrich Chemical did not alter Buckman's Namet in any way other than a change in name.

37. The HMP 2000 typically was added to the batch of wastewater while the wastewater was in a treatment tank. The wastewater was then pumped to the blend tank where polymers were added.[1] After the blend tank, the wastewater and sludge flowed through a trough

[1]The Anderson Plant stopped using the blend tank sometime near 1997.

to the clarifier, where the hydroxide sludge was allowed to separate and settle to the bottom of the clarifier allowing the “clean” water to be discharged.

38. The clarifier had a capacity of nearly 1,000,000 gallons. The settled sludge from the clarifier was collected and pumped to a sludge holding tank. The sludge was dewatered and disposed of as hazardous waste. The treated wastewater was allowed to settle in the clarifier over a period of eight (8) to ten (10) days. As the wastewater flowed upwards in the clarifier, the “clean” water was allowed to overflow the effluent weir, which flowed to the outer ring of the clarifier for discharge to the Anderson POTW.

39. On information and belief, the wastewater treatment plant operator typically added approximately 30 gallons of HMP 2000 per batch of wastewater treated. HMP 2000 was used solely as a “polisher” to precipitate any remaining metals not removed by the hydroxide precipitation process.

40. Since the mid-1980s, Anthonette Miller ("Miller") has overseen the operations at the Anderson Plant's wastewater treatment plant while being an employee of GM and then Guide. Miller is currently a Senior Environmental Engineer for Guide. Miller was selected for this position because of her knowledge of chemistry and chemistry background. Further, on information and belief, Miller became familiar with and understood the chemistry of the hydroxide precipitation process and the use and toxicological effects of HMP 2000, its breakdown/ recombination compounds, including thiram, and other chemicals used at the wastewater treatment plant.

41. On information and belief, Miller has been Guide’s certified operator for its wastewater treatment plant for the past ten (10) years, and she has prepared reports on behalf of Guide for submission to the Anderson POTW.

42. Since 1978, Lorraine Miles (“Miles”) has worked at the Anderson Plant's wastewater treatment plant as an operator on either a full or periodic basis as an employee of GM and then Guide.

43. Since 1992, Ken Tescher (“Tescher”) has worked at the Anderson Plant’s plating facility as a plating technician over the #1002 and #352 plating conveyor systems as an employee of GM and then Guide.

44. During the shutdown process, Allan Small (“Small”) served as Guide’s Vice President of Quality and Environment.

45. In 1995, GM hired Crown Environmental to provide a waste treatment supervisor to supervise the hourly employees working at the wastewater treatment plant.

46. A true and accurate copy of Crown Environmental's proposal to GM to provide a waste treatment supervisor at its Anderson Plant is attached as Exhibit 3.

47. Pursuant to Crown Environmental's proposal to GM, Crown Environmental's waste treatment supervisor for the wastewater treatment plant had responsibilities that included, but were not limited to, the following: maintaining the chemical inventory and placing chemical orders, collecting and analyzing waste streams for process control and compliance assurance, maintaining laboratory equipment, coordinating all self-monitoring events, collecting operating and laboratory data, record keeping, filing, and overall management of the operation, and preparing regulatory reports for management review and submission to the Anderson POTW. Additional responsibilities of Crown Environmental included supervising the operators’ and pipefitters' daily activities including job assignments, worker activity, safety, and compliance with UAW rules; monitoring collection of waste streams for process control and compliance assurance; performing the daily analysis of treatments with the atomic absorption spectrophotometer and

providing treatment protocol; organizing and improving the record-keeping methods for the wastewater treatment plant and complying with City and EPA requirements; developing operation manuals with standard operating procedures, emergency treatment options, troubleshooting guidelines for treatment problems; and training the waste treatment operator on all the testing operations for the laboratory.

48. On information and belief, Crown Environmental represented to GM that the Crown Environmental employees located at the Anderson Plant had experience with industrial waste treatment of waste streams containing metals.

The Anderson Plant's Plating Systems

49. During or near 1981, GM constructed the #1002 conveyor system and the #352 conveyor system to conduct the plating of metals onto plastic parts at the Anderson Plant.

50. For nearly twenty (20) years, or more, the Anderson Plant's wastewater treatment plant has treated wastewater containing copper, nickel, and chrome from its plating operations.

51. For nearly twenty (20) years, or more, the Anderson Plant's wastewater treatment plant has treated the wastewater generated by its plating operations through a hydroxide precipitation process.

52. The Anderson Plant's #1002 and #352 conveyor systems utilized a series of bath tanks and rinse tanks as part of the plating process. Bath tanks contain the metal solutions to be plated onto the plastic parts, while rinse tanks were used to rinse the parts before the parts were carried to the next step in the process. The #1002 conveyor system contained a series of forty-eight (48) tanks, of which forty-four (44) were used. The conveyor system carried racks containing numerous plastic parts. The conveyor transported the plastic parts along the plating lines and dipped the plastic parts into the various bath tanks and rinse tanks. As the parts were

dipped into the bath tanks and rinse tanks, bath solutions and rinse water would overflow the tanks and drip from the racks onto the floor. The floor of the plating facility held a containment area that caught both bath solutions and rinse water that fell to the floor as a result of the parts being dipped and dragged through the bath tanks and rinse tanks. This combination of bath solutions and rinse water caught by the containment area was sent to the Anderson Plant's wastewater treatment plant for treatment.

53. The #1002 conveyor system used various bath solutions to clean and etch the plastic parts and to coat the plastic parts with solutions including chromic acid and electroless copper.

54. The #352 conveyor system transported the plastic parts along a series of twenty-eight (28) bath and rinse tanks for further processing. The #352 conveyor system included the electroplating of copper onto the plastic parts and the dipping of the plastic parts into various nickel solutions, a chromic acid solution, and a chromic acid strip solution.

55. Over the course of at least eight (8) years, and probably longer, the chromic acid bath tanks built up residues at the bottom of those tanks forming a sludge, which was believed by Guide to be lead chromate.

56. Prior to the shutdown, the plating facility that contained #1002 and #352 conveyor systems discharged approximately 150,000 gallons of wastewater to the wastewater treatment plant per day for treatment. This wastewater consisted of between 20,000 and 30,000 gallons of water from the de-ionization process and water from the counter-flow rinse tanks, various pumps, and continuously operated eye washes, in addition to other wastewater. Additionally, rinse tanks were emptied on a rotating basis every three (3) to six (6) weeks, and the rinse water was sent to the wastewater treatment plant for treatment.

57. Over the course of at least eight (8) years, and probably longer, the sludge, which developed at the bottom of the bath tanks that contained chromic acid solution, was never cleaned nor sent to the wastewater treatment plant for treatment.

58. The Anderson Plant had an electroform plating operation and shield plating operation that produced pollutants, which on information and belief were typically treated by the wastewater treatment plant.

59. Because Guide stopped plating plastic parts on September 29, 1999, it no longer generated 150,000 gallons of wastewater per day for treatment by the wastewater treatment plant. Instead, Guide used the wastewater treatment plant to treat wastewater from various rinse tanks and Guide's efforts to clean certain bath tanks, piping, pumps, and other equipment at its plating facility.

60. Pursuant to its contractual obligation under the GM Agreement (defined and discussed below at ¶82), on October 3, 1999, Guide began shutting down and cleaning the #1002 and #352 conveyor systems, its electroform plating operation, and its shield plating operation.

61. Adjacent to the #1002 conveyor system, Guide maintained two chromic acid tanks that each contained between two (3) and three (3) inches of a thick yellow sludge, believed by Guide to be lead chromate. Guide hired Allwaste, a subsidiary of Philip Services, to powerwash the chromic acid tanks with high-pressured water. The washing of the two (2) chromic acid tanks on the #1002 conveyor system produced wash water that contained a high concentration of chrome. This wash water was treated by Guide at the wastewater treatment plant.

62. Guide’s treatment of the sludge at the bottom of the chromic acid tanks constituted a change in process as defined under Guide’s Wastewater Discharge Permit.

Guide's Treatment of Electroless Copper and Caustic Strip Solution

63. Before the shutdown, the Anderson Plant's wastewater treatment plant had never treated the entire bath solution of tank #43 on the #1002 conveyor system, which contained approximately 7,200 gallons of electroless copper solution.

64. During the shutdown of the #1002 conveyor system, Guide treated the 7,200 gallons of electroless copper solution from tank #43 under the instruction and direction of Miller.

65. Guide split the electroless copper solution into two batches for treatment. The first batch was sent to a holding tank, and Guide added approximately one (1) to two (2) feet of water to the electroless copper solution prior to treatment. Guide treated the first batch of electroless copper by using the same chemicals used at its wastewater treatment plant.

66. The hydroxide precipitation process used to treat the first batch of the electroless copper solution did not cause the sludge that formed with the metals in the wastewater (hereafter "metals sludge") to sink to the bottom of the holding tank. Instead, Miller and Tescher, who had never treated such a large concentrated quantity of electroless copper solution before, decided to filter the wastewater from the holding tank to remove the metals sludge that would normally precipitate and settle to the bottom of a tank.

67. Instead of using modern filtering equipment, Tescher filtered the first batch of the electroless copper solution he treated through a double-layer of burlap and sent the liquid to the wastewater treatment plant for further treatment.

68. The second batch of electroless copper solution was similarly treated at the plating facility through the use of chemicals used at the wastewater treatment plant under the instruction and direction of Miller.

69. Guide's treatment of the two (2) batches of electroless copper solution at the plating facility constituted a change in process as defined under Guide's Wastewater Discharge Permit.

70. Guide treated a tank of at least 7,000 gallons of caustic strip solution used to strip excess metals off parts at its plating facility with the use of chemicals used at its wastewater treatment plant under the instruction and direction of Miller.

71. Guide's treatment of the caustic strip solution at its plating facility constituted a change in process as defined under Guide's Wastewater Discharge Permit.

72. Guide instructed Allwaste to vacuum out the treated second batch of electroless copper solution, the caustic strip solution, and the sludge created by the treatment of those solutions.

73. Under directions from Guide, Allwaste transported those solutions referenced above by tanker truck across the street to Guide's wastewater treatment plant for further treatment.

74. During the shutdown process, Guide's wastewater treatment plant allowed wastewater, which should have been and had previously been segregated, to mix, forming wastewater that was much more difficult to treat. The wastewater became difficult to treat because of the presence of chelating agents from the electroless copper solution that kept a tight bond with the metals and prevented the metals from being precipitated out of the wastewater.

75. During the shutdown of the plating operations and wastewater treatment plant in November and December 1999, Guide was using a plate and frame sludge press to dewater sludge from its treatment process because the wastewater treatment plant's filtering process operated too slowly. During this period of time, on at least one occasion, Guide allowed water

from the plate and frame sludge press to be discharged directly to the Anderson POTW and ultimately to the White River.

Guide's Permit to Discharge to the Anderson POTW

76. The City of Anderson, through the authority vested in it by the National Pollution Discharge Elimination System Permit issued to the City, has required that the wastewater discharged from the Anderson Plant meet certain parameters and that it be sampled, analyzed, and the analytical results disclosed to the City of Anderson on a timely and regular basis.

77. The City of Anderson required that the wastewater generated by Anderson Plant's wastewater treatment plant be monitored and tested and the results disclosed because the Anderson Plant's discharge contains toxins.

78. Under Guide's Wastewater Discharge Permit, Guide was required to provide prior notification to the Anderson Water Pollution Control Utility of any process changes that resulted in new, increased, or different levels of pollutants. Such notification was required to be accompanied by a completed Wastewater Discharge Permit Application. A Wastewater Discharge Permit must be modified to reflect any change in process and must be approved and issued prior to the implementation of any change in process.

79. Under Guide's Wastewater Discharge Permit, any slug load or other non-compliance with its permit must be reported to the Anderson Water Pollution Control Utility within twenty-four (24) hours of discovery followed by a written report within five (5) days of occurrence.

80. Guide's Wastewater Discharge Permit contains strict limitations for the discharge of wastewater containing copper, nickel, and chrome.

81. A critical component of Guide's Wastewater Discharge Permit is Guide's duty to notify the City of Anderson of any changes in its operations that could affect Guide's discharges to the Anderson POTW, because Guide's discharges contain metals and other toxins lethal to aquatic life and harmful to the Anderson POTW.

The GM Agreement

82. On September 29, 1998, GM entered into a contract with PEP Guide Management, Limited Liability Corporation, and Light Source Parent Corporation, for the sale of certain assets, and the continued operation of the Anderson Plant (the "GM Agreement"). For an exchange of assets, GM agreed to lease to Guide the Anderson, Indiana real estate and certain equipment for use by Guide.

83. As part of the GM Agreement, Guide was required to exercise its "best efforts" to discontinue the Anderson plating operations as soon as practicable, but in no event later than December 31, 1999.

84. Guide agreed to operate and maintain the wastewater treatment plant to process wastewater from the Anderson plating operations.

85. The GM Agreement provided that no later than ninety (90) days after Guide discontinued plating operations, Guide would surrender the wastewater treatment plant to GM for decommissioning.

86. In the summer of 1999, Guide increased its metal plating production in order to accumulate a stockpile of finished products for GM prior to shutting down the metal plating operations.

87. On or before September 29, 1999, Guide stopped metal plating operations at the Anderson Plant, thereby triggering the 90-day schedule for decommissioning the wastewater treatment plant under the GM Agreement.

88. Since Guide stopped plating on or before September 29, 1999, Guide was required under the GM Agreement to surrender the wastewater treatment plant before the end of December 1999.

89. Because Guide, and GM while it was the owner of the Anderson Plant, typically closed the plant for two (2) weeks beginning on Christmas Eve, the plating facility was to be shut down and the equipment was to be dismantled and cleaned by December 22, 1999.

90. On information and belief, Guide understood the GM Agreement required the shutdown of the wastewater treatment plant by December 22, 1999.

91. The GM Agreement required Guide to complete the following cleanup-related tasks before surrendering the wastewater treatment plant to GM, including: "(i) treat all contaminated wastewater from the Anderson Plating Operations, (ii) remove all free liquids and residual excess treatment chemicals from the wastewater treatment plant, (iii) dispose of any accumulated wastewater treatment plant sludge, to the extent that such sludge can be removed by normal means using existing equipment in accordance with a mutually agreed upon tag-out/lock-out/sign-off procedure . . ."

92. In accordance with the GM Agreement, the Defendants made plans to discontinue metal plating operations at the Anderson Plant and to complete all the required cleanup-related tasks prior to surrendering the wastewater treatment plant to GM.

93. In order to accomplish the shutdown by the deadline, Defendants created a "Shutdown Committee" to schedule and direct the required activities, including the shutdown of the wastewater treatment plant.

94. The Shutdown Committee met on numerous occasions throughout October and November 1999. Defendants' employees participated in the Shutdown Committee meetings.

95. Between October and December 1999, the Defendants, pursuant to schedules discussed during Shutdown Committee meetings, implemented plans for removing metal plating chemicals and sludges from the tanks and equipment used for metal plating operations. As a result of these activities, Defendants pumped wastewater generated by cleaning the metal plating tanks and equipment to the wastewater treatment plant for treatment and eventual discharge to the White River through the Anderson POTW.

96. The wastewater generated from cleaning the metal plating tanks and equipment between October and December 1999 differed substantially from the process wastewater generated by the metal plating operations conducted at the Anderson Plant before September 1999.

97. A substantial amount of cleanup-related wastewater currently remains in tanks and other containers at the Anderson Plant.

Guide's Knowledge of the Toxic Effects of HMP 2000

98. The Anderson Plant's wastewater treatment plant has used HMP 2000 or a similar product called GCT 200 containing as their active ingredient sodium dimethyldithiocarbamate, a class of dithiocarbamate, also known as "carbamates," for close to or more than ten (10) years.

99. Miller made the decision on behalf of GM to begin using carbamates for the treatment of wastewater at the wastewater treatment plant as a metal polishing agent.

100. Ulrich Chemical's HMP 2000 product has been referred to interchangeably by Guide employees as "HMP," "GCT," "carbamate," and "DTC."

101. Regardless of the name of the metal polishing agent being used by the Anderson Plant's wastewater treatment plant, Guide's Senior Environmental Engineer Miller knew, or should have known, that it was highly toxic to aquatic life, knew, or should have known, that Guide should not use excessive amounts, knew, or should have known, that Guide should never discharge active carbamate that had not been neutralized, and knew, or should have known, that there were methods available to test for residual carbamate to ensure that active carbamate was not discharged unnecessarily.

102. As early as 1991, Miller knew that the use of carbamates/HMP 2000 required special attention by wastewater treatment plant operators.

103. During December 1991, Buckman employee Richard Youmans ("Youmans") met with Miller at the Anderson Plant to discuss problems the Anderson Plant experienced with the use of carbamate to precipitate metals to meet its permit limits.

104. Youmans advised Miller during their meeting in December 1991 that carbamate must be used carefully, should not be discharged to the Anderson POTW, and that the Anderson Plant should test the wastewater that it intended to discharge to the Anderson POTW in order to detect any residual carbamate.

105. During Youmans' meeting with Miller that occurred on December 15, 1991, Youmans provided Miller a test kit for use by the Anderson Plant in future applications of carbamate.

106. During 1995, Buckman employee Robert Mack (“Mack”) and Ulrich Chemical employees Mark Needham (“Needham”) and Jim Collins (“Collins”) met with Miller and Anderson Plant employee Sherman Sale (“Sale”) to discuss problems with the use of HMP 2000 to precipitate metals to meet its permit limit, and Miller and Sale were advised that residual HMP 2000 should not be discharged to the Anderson POTW. During this meeting, Mack provided Miller and Sale literature from Buckman describing the dangers caused by HMP 2000, which explained that the chemical was toxic to microorganisms.

107. On or about May 10, 1995, Ulrich Chemical sales representative Collins participated in a meeting with Miller. During this meeting, Collins provided Miller with information and discussed with Miller several topics regarding HMP 2000, including how to determine the proper amount of HMP 2000 needed to precipitate the metals present in wastewater through the use of stoichiometry and the testing of residual HMP 2000 at the end of the treatment process. During that meeting, Miller explained to Collins that the Anderson Plant's current use of HMP 2000 was approximately 20-24 gallons per daily batch of 160,000 gallons of wastewater being treated.

108. Sometime after September 23, 1993, Buckman distributed a Materials Safety Data Sheet, a true and accurate copy of which is attached as Exhibit 4.

109. The 1993 Materials Safety Data Sheet states on page 4 that "there are no methods available to completely eliminate any toxicity this product may have on aquatic environments."

110. The 1993 Materials Safety Data Sheet states on page 4 that "flushing residual material to an industrial sewer, if present at the site of the spill or leak incident, may be acceptable if authorized approval is obtained. If product and/or spill/leak residuals are flushed to an industrial sewer, ensure that they do not come into contact with incompatible materials. Contact

the person(s) responsible for the operation of your facility's industrial sewer system prior to intentionally flushing or pumping spills or leaks of this product to the industrial sewer."

111. During or after 1997, Buckman produced an updated Materials Safety Data Sheet that stated that "there are no methods available to completely eliminate any toxicity this product may have on aquatic environments." A true and accurate copy is attached as Exhibit 5.

112. Additionally, the 1997 Materials Safety Data Sheet stated "flushing residual material to an industrial sewer, if present at the site of the spill or leak incident, may be acceptable if authorized approval is obtained. If product and/or spill/leak residuals are flushed to an industrial sewer, ensure that they do not come into contact with incompatible materials. Contact the person(s) responsible for the operation of your facility's industrial sewer system prior to intentionally flushing or pumping spills or leaks of this product to the industrial sewer."

113. On or after December 23, 1997, Ulrich Chemical distributed a Materials Safety Data Sheet for HMP 2000 to the Anderson Plant. A true and accurate copy of the December 23, 1997 Materials Safety Data Sheet for HMP 2000 is attached hereto as Exhibit 6.

114. Ulrich Chemical's 1997 Materials Safety Data Sheet on HMP 2000 states under the title “Precautions for Safe Handling and Use,” page 3, that "there are no methods available to completely eliminate any toxicity this product may have on aquatic environments. Minimize adverse affects on these environments."

115. Ulrich Chemical's 1997 Materials Safety Data Sheet for HMP 2000 states on page 4, "flushing residual material to an industrial sewer, if present at the site of the spill or leak incident, may be acceptable if authorized approval is obtained. If product and/or spill/leak residuals are flushed to an industrial sewer, ensure that they do not come into contact with incompatible materials."

116. At all times during GM's and Guide's use of HMP 2000, Miller and, therefore, Guide knew that HMP 2000 was toxic to aquatic life.

117. Ulrich Chemical provided to Miller a three-page document, a true and accurate copy of which is attached hereto as Exhibit 7, titled "Helpful Hints for Using HMP 2000."

118. The document titled "Helpful Hints for Using HMP 2000," which was provided to Miller and, therefore Guide, stated that "HMP 2000 can be neutralized and/or oxidized through the use of bleach and/or chlorine."

119. The document titled "Helpful Hints for Using HMP 2000," provided to Miller and, therefore Guide, states that "as HMP 2000 is oxidized, the oxidation of HMP 2000 creates an even more toxic chemical, tetramethylthiuram disulfide," which is also known as "thiram."

120. Thiram is registered as a general use pesticide by the United States Environmental Protection Agency ("USEPA") and is highly toxic to fish and other aquatic life.

121. Thiram is at least thirty (30) times more toxic to certain fish species than its parent, sodium dimethyldithiocarbamate, the active ingredient in HMP 2000.

122. Through the use of the document titled "Helpful Hints for Using HMP 2000," Guide knew, or should have known, that its use of HMP 2000 could cause the production of thiram, a highly toxic chemical to fish.

Events Leading to Guide's Unreasonable and Unnecessary Overuse of HMP 2000 and Other Chemicals

123. Guide knew that the shutdown of the Anderson Plant's plating operation would generate wastewater and slurries containing unusually high levels of contaminants.

124. Guide attempted to treat heavily-contaminated wastewater and related slurries at its wastewater treatment plant rather than disposing such waste off-site at a licensed hazardous waste facility.

125. Guide's decision to treat this heavily-contaminated wastewater and related slurries set into motion a predictable chain reaction of events leading to the massive fish kill in the White River, which was completely preventable.

Guide's Shutdown of the Clarifier

126. On information and belief, Miller believed that Guide was required to shut down and clean its wastewater treatment plant by December 22, 1999.

127. In Miller's effort to ensure that Guide's wastewater treatment plant was closed by December 22, 1999, she ordered that the clarifier be shut down in mid-November 1999.

128. To shut down the clarifier, Miller ordered that some of the wastewater held in the clarifier be pumped to the City of Anderson for disposal. Additionally, Miller had Allwaste begin pumping sludge out of the clarifier into a sludge holding tank for processing and disposal.

129. Former Crown Environmental employee Juhl Baker ("Baker"), who was also a former GM employee, supervised the operation of the wastewater treatment plant during November 1999 and objected to Miller's decision to shut down the clarifier.

130. Baker believed that Miller's decision to shut down the clarifier was dangerous because the clarifier was used as a "safety cushion" to ensure that the metals present in the wastewater had completely settled out of the wastewater prior to discharge.

131. Despite Baker's objections, Miller and, therefore Guide, had the clarifier partially emptied near the end of November or early December 1999, and began pumping sludge from the clarifier.

132. On or near December 1, 1999, Miller assumed greater control over the operation of Guide's wastewater treatment plant.

133. Baker was terminated on December 15, 1999, and Miller worked daily with John Deaton ("Deaton"), another Crown Environmental employee, to determine the amount of HMP 2000 to use to treat and/or re-treat various batches of wastewater.

134. By shutting down the clarifier, Miller and, therefore Guide, removed an important piece of equipment and a necessary part of the wastewater treatment process.

135. Guide's decision to shut down its clarifier constituted a change of process under Guide's Wastewater Discharge Permit.

136. Because Guide continued to treat wastewater from the cleaning operations of the plating facility, Miller ordered that a new procedure be put in place for the treatment of the shutdown-related wastewater.

Guide's Procedure to Treat Wastewater Without a Clarifier

137. Under Miller's new procedure for the treatment of wastewater with the shutdown of a clarifier, wastewater was to be treated in the individual treatment tanks. Under Miller's new treatment procedure, wastewater was only allowed to settle for between two (2) to four (4) hours before it was discharged. Wastewater was allowed to settle between eight (8) to ten (10) days in the clarifier under the former procedure. Further, under the new treatment procedure, the Guide employees would test a sample from the top of the water in the treatment tank, which was not representative of the wastewater in the treatment tank. If the water off the top of the treatment tank appeared to meet Guide's permit limits, the Guide employees would then begin an unusual discharging process. The wastewater and sludge were pulled from the bottom of the tank and pumped to the center of the clarifier. Once the Guide employees no longer observed sludge being

pumped to the center of the clarifier, they pumped the supposedly "clean" wastewater to the outer ring of the clarifier, which was then discharged to the Anderson POTW.

138. Guide's direct discharges to the outer ring constituted a bypass and was not in accordance with the design or permitted use of the wastewater treatment equipment and facility.

The Equipment At the Wastewater Treatment Plant Was In a State of Neglect

139. During the shutdown, Guide's wastewater treatment plant was in a state of neglect and disrepair.

140. During the shutdown, only four (4) treatment tanks were being used for treatment. Of those four (4) tanks, tank #1 had a torn plastic liner and the mixer on tank #4 had a bent shaft so that it could not be used. Because of these problems, Guide dropped air hoses into tanks #1 and #4 to agitate the wastewater and chemicals to mix the treatment tanks' contents.

141. During the shutdown, Guide was not using its blend tank, which the Anderson Plant had been bypassing for almost three (3) years.

142. Sometime in December 1999, prior to December 15, a pipe used for Guide's chemical delivery system, through which chemicals were pumped to treatment tanks from the building located at the wastewater treatment plant, became clogged. Because the pipe was clogged, Guide began pumping certain chemicals, including HMP 2000, directly from totes, which are 330 gallon chemical containers, through pumps and hoses to the various treatment tanks for treatment.

Guide’s Difficulty Treating Wastewater

143. Beginning on or near November 22, 1999, Guide experienced difficulty treating wastewater because Guide's typical use of chemicals failed to precipitate the metals out of its wastewater.

144. The reason Guide was having problems precipitating metals out of its wastewater was because the wastewater had a high metal content from the rinsing and washing of the sludge at the bottom of certain bath tanks and the treatment of the electroless copper solution, which should have been segregated, but was pumped to the wastewater treatment plant and allowed to mix with other waste streams.

145. On or near November 26, 1999, Guide began re-treating tanks of wastewater to try to precipitate the metals so that the wastewater would be within Guide's permitted range for allowable discharges.

146. On December 4, 1999, Guide's treatment and re-treatment methods failed to precipitate nickel in its wastewater so that Guide's wastewater could not be discharged.

147. For example, on December 4, 1999, instead of re-treating the contents of treatment tank #4, which could not be discharged because of nickel in excess of Guide’s permit limit, Guide pumped the contents of tank #4 to the clarifier.

148. Guide pumped the contents of tank #4 to the clarifier because Guide was continuing to receive wastewater from the plating facility, but had no other operational treatment tanks in which the wastewater could be placed.

149. Because of Guide’s difficulty precipitating metals out of its wastewater, Guide re-treated at least ten (10) batches of wastewater between December 4 and December 19, 1999.

150. Because Guide was continuing to experience difficulty precipitating metals from its wastewater, on or near December 7, 1999, Miller conferred with Deaton, and/or another representative of Crown Environmental, to determine a way in which Guide could treat the metals in its wastewater so that Guide could resume discharging its wastewater to the Anderson POTW. It was during or near this time that Miller and Deaton decided that they would precipitate the metals out of the wastewater by using increased amounts of HMP 2000 and other chemicals after the hydroxide precipitation process.

151. On or near December 7, 1999, Guide ran out of HMP 2000.

152. On or near December 8, 1999, Guide placed an order for HMP 2000 with Ulrich Chemical. At the time of the order, or during follow-up calls, Guide stated that it was out of HMP 2000 and would have to close its wastewater treatment plant unless it received a shipment of HMP 2000 immediately.

153. Sometime before December 15, 1999, the wastewater treatment plant contacted the plating facility and requested that the plating facility close its discharge line to the wastewater treatment plant because there was simply no place to receive any additional wastewater for treatment. The wastewater treatment plant did not accept wastewater from the plating facility for a period of one (1) to several days.

Guide's Purchase and Use of Chemicals

154. During December 1999, Miller and/or others at Guide made close to, or more than, fifty (50) telephone calls to Ulrich Chemical requesting rush orders of chemicals for its wastewater treatment plant, including orders for HMP 2000.

155. In an effort to treat the wastewater that contained high metals concentrations, Guide purchased and used unreasonable and excessive quantities of HMP 2000, which contained SDDC as its active ingredient.

156. Attached as Exhibit 8, is a true and accurate copy of Guide's receipt of 990 gallons of HMP 2000, which Guide received on Wednesday, December 8, 1999.

157. Attached as Exhibit 9, is a true and accurate copy of Guide's receipt of 1,650 gallons of HMP 2000, which Guide received on Thursday, December 9, 1999.

158. Attached as Exhibit 10, is a true and accurate copy of Guide's receipt of approximately 734 gallons of HMP 2000, which Guide received on Friday, December 10, 1999.

159. Attached as Exhibit 11, is a true and accurate copy of Guide's receipt of approximately 4,500 gallons of HMP 2000, which was delivered by tanker truck to Guide on Friday, December 10, 1999.

160. Attached as Exhibit 12, is a true and accurate copy of Guide's receipt of 3,300 gallons of HMP 2000, which Guide received on Friday, December 17, 1999.

161. Between December 8 and December 17, Guide purchased approximately 11,174 gallons of HMP 2000.

162. On or about January 10, 2000, Guide conducted an inventory to determine the amount of HMP 2000 remaining and determined that it had 1,225 gallons of HMP 2000 remaining.

163. The difference between the amount of HMP 2000 purchased by Guide between December 8 and December 17, 1999 and what Guide reportedly had remaining on January 10, 2000, is 9,949 gallons of HMP 2000. Therefore, on information and belief, Guide used or disposed of nearly 10,000 gallons of HMP 2000 at the Anderson Plant over a ten (10) day period.

164. Between December 8 and December 17, 1999, Guide purchased more HMP 2000 than the collective total of the amount (i) that GM had purchased during 1997; and, (ii) that GM and Guide purchased throughout 1998. In fact, Guide's purchases of HMP 2000 during this ten (10) day period constitutes nearly fifty percent (50%) of Guide's entire 1999 purchase amount.

165. As further illustration of excessive chemical use in December 1999, Guide purchased over 10,000 gallons of calcium chloride, which more than doubled its average monthly purchase. On January 10, 2000, Deaton sent a letter to Miller stating he wanted to send 615 gallons of calcium chloride back to Ulrich Chemical. Therefore, on information and belief, Guide used or disposed of approximately 9,385 gallons of calcium chloride during this period.

166. As further illustration of excessive chemical use in December 1999, Guide purchased 3,300 gallons of sodium hypochlorite, which is commonly known as bleach. Prior to December, in all of 1999, Guide purchased only approximately 150 gallons of sodium hypochlorite. On January 10, 2000, Deaton sent a letter to Miller stating he wanted to send 1,825 gallons of sodium hypochlorite back to Ulrich Chemical. Therefore, on information and belief, Guide used or disposed of approximately 1,330 gallons of sodium hypochlorite during December 1999.

167. Upon information and belief, Guide purchased 3,300 gallons of sodium hypochlorite in an attempt to "neutralize" residual HMP 2000 in its wastewater.

168. As further illustration of excessive chemical use in December 1999, Guide purchased over 8,000 gallons of sulphuric acid. Prior to December, in all of 1999, Guide purchased only approximately 7,070 gallons of sulphuric acid. On January 10, 2000, Deaton sent a letter to Miller stating he wanted to send 435 gallons of sulphuric acid back to Ulrich Chemical.

Therefore, on information and belief, Guide used or disposed of approximately 7,565 gallons of sulphuric acid during December 1999.

Guide's Use of Unreasonable and Excessive Quantities of HMP 2000 and Other Chemicals

169. On December 9, 1999, Guide reported that it re-treated approximately 175,000 gallons of wastewater in treatment tank #5. To treat the wastewater in tank #5, Guide used 2,625 gallons of calcium chloride, 210 gallons of sodium hydroxide, and 2,050 gallons of HMP 2000.

170. Guide performed a metals analysis before treatment to determine the amount of copper, nickel, and chrome present in the contents held in tank #5 on December 9, 1999. According to the stoichiometric chart used to determine the proper amount of HMP 2000 to be used to precipitate metals, Guide used more than four (4) times the amount of HMP 2000 necessary to precipitate the amount of copper, nickel, and chrome detected by Guide's analysis of the contents of tank #5.

171. Guide reported that after it treated the contents of tank #5 on December 9, 1999, it pumped the contents of tank #5, including the 2,050 gallons of HMP 2000, to the clarifier for re-treatment.

172. On or about December 10, 1999, Guide refilled tank #5 from wastewater in the clarifier. On December 11, 1999, Guide re-treated the contents of tank #5 with the use of various chemicals, including an additional 330 gallons of HMP 2000.

173. Guide reported that on December 11, 1999, it discharged the contents of treatment tank #5 by pumping the contents directly to the outer ring of the clarifier, which discharged the wastewater to Anderson POTW and eventually the White River.

174. On December 12, 1999, Guide reported that it treated approximately 155,000 gallons of wastewater in treatment tank #4 with 1,550 gallons of calcium chloride, 230 gallons of sodium hydroxide, and 1,550 gallons of HMP 2000.

175. Guide performed an analysis to determine the concentration of copper, nickel, and chrome present in the contents of treatment tank #4 on December 12, 1999, before Guide added the various chemicals mentioned in the preceding paragraph. Based on Guide's analytical results, Guide used more than two (2) times the amount of HMP 2000 it needed to treated the contents.

176. Guide reported that the wastewater it treated in treatment tank #4 on December 12, 1999 was sent to the clarifier.

177. On or about December 12, 1999, Guide pumped wastewater out of the clarifier for re-treatment. This wastewater was treated and discharged to Anderson POTW.

The Tanker Truck Delivery of HMP 2000

178. On December 10, 1999, Guide ordered from Ulrich Chemical a full tanker truck containing 4,500 gallons of HMP 2000.

179. Ulrich Chemical was unable to provide this large quantity of HMP 2000 to Guide. As a result, Ulrich Chemical ordered a tanker truck to be sent directly from Buckman's St. Louis facility to Guide.

180. When the tanker truck of HMP 2000 arrived at Guide, Miller directed the tanker truck driver to discharge between 1,000 and 1,500 gallons of HMP 2000 directly into treatment tank #4.

181. The tanker truck driver explained to Miller that he had no gauge or measuring device on his tanker in which to measure the discharge of such a stated amount of HMP 2000.

182. Miller responded by asking the driver how long it took him to discharge a typical tanker-size load, and then estimated that it would take approximately 15 minutes for the tanker to discharge between 1,000 and 1,500 gallons to treatment tank #4.

183. Miller directed the tanker truck driver to begin discharging the HMP 2000 into treatment tank #4 and approximately 15 minutes later, Miller directed the driver to stop pumping HMP 2000 into treatment tank #4.

184. The driver asked Miller where he should place the remaining HMP 2000. Miller requested the driver to pump the remaining HMP 2000 into totes available at the wastewater treatment plant. Accordingly, the driver loaded five (5) totes with 1,650 gallons of HMP 2000.

185. Because there was still remaining HMP 2000 in the tanker truck, the driver asked Miller where she would like the remaining product to be placed. It was at this time that Miller determined that HMP 2000 should be pumped into an orange chemical tank, which held approximately 1,000 gallons. At that time, the 1,000 gallon chemical tank was filled with HMP 2000.

186. Because the driver still had HMP 2000 remaining in his tanker truck, Miller said she would determine if Guide's plant across the street had totes for the remaining HMP 2000. It was during this time that the driver began to disconnect the hoses from his tanker truck. During this period of time, the driver was assisted by contractors working for Guide present at the wastewater treatment plant.

187. In the process of disconnecting the hoses from the tanker truck, the tanker truck driver disconnected a camlock fitting causing HMP 2000 to spray onto one of the contractors working for Guide and also onto himself. Both individuals took showers at Guide to wash off the HMP 2000. It is believed that at least ten (10) or more gallons of HMP 2000 was spilled on the

ground when the camlock fitting was disconnected, and the HMP 2000 entered a drain that directly discharged to the Anderson POTW.

188. The driver never went to Guide's other plant to unload HMP 2000.

189. Sometime near midnight on the evening of December 10, 1999, the driver still had a substantial amount of HMP 2000 remaining in the tanker truck. It was at this time that Miller requested the driver to discharge the remaining HMP 2000 into a sloped trench built into the concrete floor of the wastewater treatment plant building. A sump pump at the end of the trench pumped the HMP 2000 to Guide's clarifier and/or treatment tank #4.

190. On information and belief, part of the HMP 2000 delivered by tanker truck on December 10, 1999 was used to treat the wastewater in treatment tank #3, which was ultimately discharged to the Anderson POTW.

191. It is believed that the contents of treatment tank #4, including the 1,000 to 1,550 gallons of HMP 2000, was discharged to the Anderson POTW during or near the morning hours of December 11, 1999.

The Upset of the Anderson POTW

192. On or about December 12, 1999, Guide's discharge of toxic chemicals killed or inhibited the activated sludge and nitrification process system so that the Anderson POTW was not able to meet its ammonia limits, which may have contributed to the fish kill.

193. On December 12, 1999, a sample taken from the primary plant at the Anderson POTW was red in color and smelled like dead fish. Samples taken from the Anderson POTW on December 12, 1999 indicated a sudden increase in dissolved oxygen. The sample was later analyzed for ammonia and indicated an increase in the effluent ammonia at the Anderson POTW.

194. Samples taken on Monday, December 13, 1999, from the Anderson POTW's Primary Plant at Dewey Street showed that the primary effluent total suspended solids ("TSS") was at 277 parts per million ("ppm") when Anderson POTW's primary effluent TSS was normally in a range near 70 ppm. The Anderson POTW's final effluent ammonia discharged to the White River had an ammonia concentration of 8 ppm when the normal effluent ammonia is between 0.1 and 0.2 ppm.

195. On or about December 13, 1999, foam began to accumulate at the Anderson POTW.

196. On December 16, 1999, Marlin Fisher, the industrial surveillance inspector for the Anderson POTW ("Fisher"), visited Guide to conduct his prescheduled annual inspection. During his visit, Fisher spoke with Miller and Tescher.

197. During Fisher's December 16, 1999 inspection of Guide, Miller told Fisher for the first time that Guide was in the process of shutting down its plating facility and wastewater treatment plant and that Guide was experiencing problems treating its wastewater.

198. On December 16, 1999, Chris Filstrup, an employee of the Anderson POTW ("Filstrup"), performed a normal monthly procedure and placed an automatic composite sampler at Guide, which sampled Guide's wastewater discharged to the Anderson POTW.

199. Part of the sample taken from the composite sampler at Guide on December 16 and 17, 1999 was analyzed by the Anderson POTW.

200. The Anderson POTW's analysis of the composite sample taken from Guide on December 16 and 17, 1999 was preserved at the Anderson POTW using EPA approved preservation techniques. When the preservative was added to the sample, a very unusual and very strong chemical odor occurred.

201. Part of the sample taken from the composite sampler at Guide on December 16 and 17, 1999 appeared to have a very high reading for ammonia. Guide's treatment process would not typically contain ammonia.

202. On information and belief, Fisher believed that the ammonia reading was a false reading and that the ammonia electrode actually detected dimethylamine, which is another breakdown/recombination chemical compound of HMP 2000.

IDEM's and DNR's Investigation of the Fish Kill

203. On Thursday, December 16, 1999, DNR received its first report of dead fish in the White River. DNR investigated the report on that date and observed approximately twenty (20) dead fish. DNR did not observe anything unusual in the river in the vicinity of the dead fish, such as discoloration, unusual odor, sheen, or any other evidence of a chemical or toxic spill.

204. On Saturday, December 18, 1999, IDEM received its first report of dead fish in the White River. IDEM investigated the report on that date and observed a small number of dead fish. IDEM did not observe anything unusual in the river in the vicinity of the dead fish, such as a discoloration, unusual odor, sheen, or any other evidence of a chemical or toxic spill.

205. At no time before December 18, 1999, did Guide report any unusual chemical discharges, spills, or releases except for a false report of a release on December 7, 1999 which contained false information. At no time before December 18, 1999, did the Anderson POTW report foaming, upset conditions, or any other unusual discharges. Had Guide or Anderson POTW reported any unusual discharges, spills, disruptions, or upsets, it would have triggered an emergency response from IDEM and DNR.

206. On Sunday, December 19, 1999, DNR became aware of an extensive fish kill in the White River south of Anderson and began to investigate the cause of the fish kill.

207. On Monday, December 20, 1999, DNR contacted IDEM regarding the fish kill and the two (2) agencies began a joint investigation into the cause of the fish kill.

208. The State has expended substantial time and resources to conduct this investigation. Beginning on December 20, 1999, and continuing to date, the joint agency investigation and response included, but was not limited to, activities such as: (i) taking and analyzing water samples from Guide, Anderson POTW, and the White River; (ii) tracking the contaminant plume in the White River; (iii) collecting and analyzing fish, sediment, and macroinvertebrate samples from the White River; (iv) inspecting and investigating the processes at Guide and the Anderson POTW; (v) interviewing employees, contractors, and suppliers of Guide and the Anderson POTW; (vi) inspecting and investigating all significant industrial users in Anderson; (vii) pursuing all tips and leads provided to the State; (viii) establishing an emergency response center in Anderson; (ix) sampling of private drinking wells in connection with local county and state health departments; and (x) collecting and disposing of fish killed by Guide's discharge.

209. On information and belief, on or near December 21, 1999, the Anderson POTW requested Guide to immediately cease all discharges. Miller, on behalf of Guide, left a telephone message for Fisher stating that Guide would not make any additional discharges.

210. In a letter dated December 23, 1999 sent to Fisher, Guide agreed not to make any additional discharges.

211. On information and belief, on December 24, 1999, Miller told Fisher that Guide's only discharge occurred on December 11, 1999.

212. On December 29, 1999, Miller told Filstrup during his visit to Guide's wastewater treatment plant that Guide's last discharge occurred on December 19, 1999.

213. On December 30, 1999, IDEM employees with the Office of Water Management met with Guide employees, including Small, the Vice-President of Quality and Environment; Miller, Senior Environmental Engineer; Keith Updike, the Anderson Plant Manager; and Guide's legal counsel. During this meeting, Miller stated that Guide made eleven (11) wastewater discharges to the Anderson POTW between December 11 and December 19, 1999.

214. On December 31, 1999, IDEM representatives and a representative of the USEPA met with Guide employees, Small and Miller, to review Guide's treatment process.

215. On January 3, 2000, IDEM employees met with Guide employees, Small, Miller, Tom Cullop, and Philip Moore, with Guide's legal counsel present. During this meeting, Miller stated that on December 7, 1999, treatment tank #4 was suspected of leaking and/or losing between 18,000 to 24,000 gallons of untreated wastewater. Miller stated that on December 7, 1999, she thought that some of the contents of tank #4 were discharged to the clarifier. To be sure that tank #4 was not leaking, Miller stated that treatment tank #4 was filled with water to make sure that there was not a leak in the tank. Miller later advised that no release had occurred, but that a valve had been left open so that the contents of tank #4 actually went into another tank.

216. Miles stated, and the Treatment Log reflects, that the drop in level of treatment tank #4 occurred on or before December 2, 1999, not December 7 as reported by Miller.

217. Contrary to Miller's statement to IDEM, Miles stated that treatment tank #4 was never filled with water to check the integrity of the tank.

218. On January 3, 2000, Deaton re-analyzed a sample taken from December 4, 1999, and found that the concentration of metals was much higher than recorded in the metals log.

219. On or about January 4, 2000, Deaton, on behalf of Guide and Crown Environmental, contacted Ulrich Chemical and requested information on a method to test for residual HMP 2000.

220. On January 4, 2000, Collins of Ulrich Chemical faxed to Deaton, at Guide, the Technical Data Sheet on HMP 2000 explaining the procedure for determining the proper amount for use, a chart containing the proper levels of pH at which various metals can be precipitated, a document explaining how HMP 2000 precipitates metals out of wastewater, and a test procedure for the determination of residual HMP 2000 in a discharge.

221. On or about January 6, 2000, Miller, on behalf of Guide and Crown Environmental, requested that Shawn Wiram ("Wiram") of Ulrich Chemical fax to her the analytical methods in which to determine the presence of residual HMP 2000. Wiram faxed to Miller the same information faxed by Collins to Deaton at Guide on January 4, 2000.

Guide's Wastewater Treatment Logs

222. On January 3, 2000, during the meeting between IDEM representatives and Guide employees with Guide's legal counsel present, Guide provided IDEM with a copy of its Wastewater Treatment Log covering the period between November 26, 1999 through December 19, 1999 ("Wastewater Treatment Log #1"). Even though Miller stated on December 30, 1999 that Guide made eleven (11) discharges to the Anderson POTW between December 11 and December 19, 1999, Wastewater Treatment Log #1 only showed eight (8) discharges for this time period.

223. Wastewater Treatment Log #1 was false and misleading because: (i) it failed to include at least three (3) treatments discharged to the Anderson POTW between December 11 and December 19, 1999, which may include the treatment to tank #4 on December 10, 1999;

(ii) it failed to accurately state the amount of HMP 2000 Guide used for the treatments listed between December 11 and December 19, 1999, which according to Miles, amounted to 330 gallons of HMP 2000 and not the reported 300 gallons per batch; (iii) it failed to include re-treatments made to various treatment tanks between December 11 and December 19, 1999; and, (iv) it failed to include treatments that occurred on December 20, 21, and 22, 1999.

224. Sometime after January 3, 2000, Guide produced a revised copy of its wastewater treatment log to IDEM representatives, which contained an entry for December 20, 1999, (hereafter "Wastewater Treatment Log #2").

225. At the time that Guide provided Wastewater Treatment Log #2 to IDEM representatives, Guide additionally produced a document titled "Revised Wastewater Treatment Log" that contained entries for the treatment of wastewater through and including December 22, 1999 (hereafter "Wastewater Treatment Log #3").

226. Wastewater Treatment Logs #2 and #3 are false and misleading because; (i) they failed to include at least three (3) treatments discharged to the Anderson POTW between December 11 and December 19, 1999, which may include the treatment to tank #4 on December 10, 1999; (ii) they failed to accurately state the amount of HMP 2000 Guide used for the treatments listed between December 11 and December 19, 1999, which according to Miles amounted to 330 gallons of HMP 2000 and not the reported 300 gallons per batch; (iii) they failed to include re-treatments made in various treatment tanks between December 11 and December 19, 1999; and (iv) Wastewater Treatment Log #2 failed to include treatments that occurred on December 21 and 22, 1999.

227. According to Miller, the wastewater treatment logs failed to include the use of 1,550 gallons of HMP 2000 to treat treatment tank #4's contents on or about December 10, 1999.

228. As part of Guide's record-keeping process for its wastewater treatment plant, the Crown Environmental employee who supervised the operations at the wastewater treatment plant kept two log books: one log book that reflected the amount of chemicals used in the wastewater treatment process, and a second log book reflected both pretreatment and post-treatment concentrations of metals detected by the Crown Environmental employee.

229. Both the chemical log book and the metals analysis log book are false and misleading because they failed to include any entries with respect to the December 10, 1999 treatment of treatment tank #4's contents and other treatments.

230. When Miller provided the Wastewater Treatment Log #1 to IDEM representatives on January 3, 2000, she did not state that it was inaccurate. Miller's actions in providing inaccurate and misleading information to IDEM representatives investigating the fish kill were a factor in delaying the determination of the cause of the fish kill.

231. On or about December 22, 1999, an IDEM representative contacted Buckman and requested the procedures Buckman used to detect residual sodium dimethyldithiocarbamate. Buckman told IDEM that it would send complete procedures to detect residual sodium dimethyldithiocarbamate. However, Buckman sent to IDEM an inferior and rudimentary test method and failed to disclose that Buckman had developed a more sophisticated method known as the "HPLC" method. Buckman's failure to provide the HPLC test method and the related literature to IDEM further delayed the determination of the cause of the fish kill.

232. On January 13 and 14, 2000, IDEM representatives interviewed Gerald Jones ("Jones"), an independent contractor to Guide, who serves as Guide's material analyst with Guide's legal counsel present. During the January 13, 2000 interview, Jones produced a computer screen print-out, which Jones explained showed all HMP 2000 purchases by Guide.

The IDEM investigators showed Jones an Ulrich Chemical record showing that 4,500 gallons of HMP 2000 had been delivered to Guide by tanker truck on December 10, 1999. Jones stated that he had no documents reflecting the tanker truck delivery of HMP 2000.

233. During Jones' January 14, 2000 interview with IDEM representatives, he produced a document reflecting the delivery of a tanker truck of HMP 2000 to Guide.

234. On January 20, 2000, IDEM representatives interviewed Miller, with Guide's legal counsel present. During this interview, Miller stated that when the tanker truck of HMP 2000 arrived, she had 1,550 gallons of HMP 2000 placed into treatment tank #4. Miller additionally stated that the remaining HMP 2000 was loaded into totes and a 1,000 gallon storage tank inside the wastewater treatment plant building. At no time did Miller state that HMP 2000 had been spilled or that HMP 2000 had been placed into a trench and pumped to the clarifier and/or treatment tank #4.

235. Prior to January 24, 2000, IDEM representatives conducted several meetings with Guide representatives and interviewed twelve (12) employees of Anderson POTW, approximately twenty (20) employees of Guide, two (2) employees of Crown Environmental, two (2) employees from Ulrich Chemical, one (1) employee of CTL Distribution.

236. In IDEM's efforts to investigate the cause of the fish kill, IDEM, at times, utilized the services of over seventy (70) IDEM employees.

237. IDEM was also required to initiate court proceedings against Guide in order to conduct its investigation. On January 10, 2000, IDEM representatives went to the Anderson Plant for the purpose of conducting an inspection as allowed by Indiana law. Guide refused to allow the inspection, requiring IDEM to obtain a search warrant to conduct the inspection.

238. On January 12, 2000, IDEM representatives visited the Anderson Plant for the purpose of conducting an inspection as allowed by Indiana law. Guide again refused to allow the inspection, thereby requiring IDEM to execute the search warrant.

239. In DNR's efforts to investigate the cause of the fish kill, DNR, at times, utilized the services of over fifty-five (55) DNR employees.

240. As part of IDEM's and DNR's efforts to investigate the cause of the fish kill, the agencies utilized the services of numerous private laboratories.

241. In IDEM's and DNR's efforts to investigate the cause of the fish kill, they have devoted substantial resources to thoroughly investigate the cause of the fish kill.

242. Samples taken from the White River on December 23, 1999 at 96th Street, 86th Street, and samples taken from Broad Ripple all reflect the presence of toxins Guide discharged at levels lethal to fish.

243. Samples taken from Guide's tanks #3 and #4 and the clarifier on January 5, 2000 all reflect the presence of HMP 2000, thiram, and other toxic chemicals at levels lethal to fish.

244. At all times, Guide and Crown Environmental had a duty to exercise proper product stewardship in their use of toxic chemicals, such as HMP 2000.

245. Guide and Crown Environmental failed to exercise reasonable and ordinary care in their product stewardship for many reasons, including, but not limited to, the following:

- they failed to determine the proper amount of HMP 2000 and other chemicals needed to precipitate the metals out of the wastewater treated at the wastewater treatment plant;
- they failed to appreciate the toxicity of both HMP 2000 and its breakdown/ recombination products, such as Thiram, and other chemicals used at its wastewater treatment plant;

- they failed to utilize less toxic and dangerous methods to treat wastewater generated as a result of its cleaning operations at the plating facility, including the hauling away, treatment, and disposal of the wastewater offsite;
- they failed to test for residual HMP 2000, Thiram, and other chemicals present in Guide's wastewater before discharging its wastewater to the Anderson POTW and to the White River;
- they failed to remove any residual HMP 2000 through precipitation before discharge;
- they failed to provide the State accurate and non-misleading documents and information reflecting Guide's use of chemicals at Guide's wastewater treatment plant;
- they failed to notify the Anderson POTW of numerous changes of process;
- they failed to segregate waste streams that contained electroless copper from waste streams that contained chrome and nickel;
- they failed to disclose to the City of Anderson, the Anderson POTW, IDEM, DNR, and the USEPA, their use of chemicals at its wastewater treatment plant;
- they treated 7,200 gallons of electroless copper solution and several thousand gallons of caustic strip solution at its plating facility when they had never treated such a large quantity of electroless copper solution before;
- they failed to make and maintain accurate records of their treatment processes, the chemicals they used, and whether those treatments were discharged to the Anderson POTW;
- Crown failed to exercise reasonable supervision of treatments occurring at the wastewater treatment plant; and,
- Crown failed to carry out the duties it assumed under its contract.

STATUTORY AND REGULATORY BACKGROUND

IDEM's Right to Access and to Inspect

255. Pursuant to Ind. Code § 13-14-2-2, "[IDEM] may have a designated agent, upon presentation of proper credentials, enter upon private or public property to inspect for and investigate possible violations of … [w]ater pollution laws, [e]nvironmental management laws…, [and] [a]ny rule adopted by one (1) of the boards."

256. Pursuant to 327 Indiana Administrative Code ("IAC") 5-11-5(5), failure to allow entry, inspection and monitoring by department personnel when requested, in accordance with applicable law, is deemed a violation.

Natural Resource Damages and Cost Recovery

257. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), "the owner or operator of a vessel or a facility; [and] any person who at the time of disposal of any hazardous substance owned or operated any facility at which hazardous substances were disposed of; [and] any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility…owned or operated by another party or entity and containing such hazardous substances,…from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for – all costs of removal or remedial action incurred by …a State …not inconsistent with the national contingency plan [and] … damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such release."

258. Pursuant to Section 107(f)(1) of CERCLA, 42 U.S.C. § 9607(f)(1), and Section 311(f)(5) of the Clean Water Act, 33 U.S.C. § 1321(f)(5), liability for natural resource damages shall be to the State for natural resources belonging to, managed by, controlled by, or appertaining to the State.

259. Pursuant to Section 311(f)(4) of the Clean Water Act, 33 U.S.C. § 1321(f)(4), "[t]he costs of removal of oil or a hazardous substance for which the owner or operator of a …facility is liable under [Clean Water Act § 311(f)] shall include any costs or expenses incurred by the Federal government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of [Clean Water Act § 311(b)]."

260. Pursuant to Section 311(f)(5) of the Clean Water Act, 33 U.S.C. § 1321(f)(5), "[t]he President, or the authorized representative of any State, shall act on behalf of the public as trustee of the natural resources to recover for the costs of replacing or restoring such resources."

261. Pursuant to 40 C.F.R. § 116.1, "[t]his regulation designates hazardous substances under section 311(b)(2)(A) of the Federal Water Pollution Control Act" ("the Clean Water Act"). The regulation applies to discharges of substances designated in Table 116.4. This table includes, but is not limited to, ammonia and carbon disulfide.

262. Pursuant to 40 C.F.R. § 302.4(a), "the elements and compounds and hazardous wastes appearing in table 302.4 [of 40 C.F.R. § 302.4] are designated as hazardous substances under section 102(a) of [CERCLA]." This list includes, but is not limited to, ammonia, thiram, and carbon disulfide.

263. Pursuant to Ind. Code § 13-14-10-3, the commissioner may order and provide assistance to abate or remedy an emergency, on private or public property, caused by the

discharge or impending discharges of any contaminant into or on the air, land, or waters of Indiana that poses an imminent and substantial danger to public health or the environment whenever: (i) the assistance must be immediate to be efficacious; and (ii) any person responsible for abatement or remedying the emergency: (a) cannot be determined or located; (b) or has refused or failed to take prompt and effective action to abate or remedy the emergency…. In addition to any civil or criminal penalties under the environmental management laws the department may recover the cost of assistance provided under this section from any person responsible for the emergency by commencing a civil action in any court of competent jurisdiction. Officials who collect money under this subsection shall remit the money to the treasurer of state. The money shall be deposited in the environmental management special fund created by Ind. Code § 13-14-12.

264. Pursuant to Ind. Code § 13-25-4-8(a) except as provided in subsections (b), or (c), or (d) [referring to and adopting CERCLA's enumerated defenses], a person that is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the costs of removal or remedial action incurred by the commissioner consistent with the national contingency plan; [and] … damages for injury to; destruction of; or loss of; natural resources in Indiana; is liable, in the same manner and to the same extent, to the state under this section.

265. "Facility" is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), as "any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel."

266. "Hazardous substance" is defined in Section 101(14)(B) of CERCLA, 42 U.S.C. § 9601(14)(B), and includes in the definition of the term "any element, compound, mixture, solution, or substance designated pursuant to [Section 102 of CERCLA]."

267. "Hazardous substance" as defined in Section 311(a)(14) of the Clean Water Act, 33 U.S.C. § 1321(a)(14), means any substance designated pursuant to Section (b)(2).

268. "Person" is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9701(21), as "an individual, firm, corporation, association, partnership, consortium, joint venture, [or] commercial entity …."

Pollutant

269. "Pollutant" is defined by 40 C.F.R. § 401.11(f) and 327 IAC 5-1.5-41 as dredged spoil, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, solid wastes, toxic wastes, hazardous substances, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and other industrial, municipal, and agricultural waste discharged into water.

Publicly Owned Treatment Works (POTW)

270. "Publicly owned treatment works", or "POTW" is defined by 327 IAC 5-1.5-48 and 40 C.F.R. § 403.3(o) as a treatment works, as defined by Section 212 of the Clean Water Act, 33 U.S.C. § 1292, which is owned by a state or municipality (as defined by Section 502(4) of the Clean Water Act, 33 U.S.C. § 1362(4)). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial waste of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality, as defined in

Section 502(4) of the Clean Water Act, 33 U.S.C. § 1362(4), which has jurisdiction over the indirect discharges to, and the discharges from, such a treatment works.

Pretreatment Standards and Requirements

271. Section 307(d) of the Clean Water Act, 33 U.S.C. § 1317(d), provides that "after the effective date of any effluent standard or prohibition or pretreatment standard promulgated under this section, it shall be unlawful for any owner or operator of any source to operate any source in violation of such effluent standard or prohibition or pretreatment standard."

272. Pursuant to 40 C.F.R. § 403.5(a)(1), 327 IAC 5-12-2(a)(1), and Section 51.51 of the Anderson Code of Ordinances Title V, Chapter 51, which governs wastewater discharges to the Anderson POTW, most recently revised on August 19, 1997 (hereinafter referred to as the "Ordinance"), an industrial user may not introduce into a POTW any pollutant(s) which cause pass through or interference. These general prohibitions apply to any such user introducing pollutants into a POTW whether or not the user is subject to national pretreatment standards or any other national, state, or local pretreatment standards or requirements.

273. Pursuant to 40 C.F.R. § 403.5(b)(4), 327 IAC 5-12-2(b)(4), and Section 51.51(A)(4) of the Ordinance, the release of any pollutant, including oxygen demanding pollutants in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW is prohibited.

274. Pursuant to 40 C.F.R. § 403.17, and Section 51.562 of the Ordinance, bypass is prohibited, and the industrial user is subject to an enforcement action for a bypass unless the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; there was no feasible alternative to the bypass; and the industrial user submitted the required notices to the POTW. If an industrial user knows in advance of the need for a bypass, it shall submit prior

notice to the POTW at least ten days before the date of the bypass, if possible. If the industrial user did not know of the need for a bypass in advance, it shall submit oral notice to the POTW within 24 hours from the time the industrial user becomes aware of the bypass, and submit written notice within 5 days of the time the industrial user became aware of the bypass. "Bypass" is defined under 40 C.F.R. § 403.17(a)(1), and Section 51.562(A)(1) of the Ordinance, and as the intentional diversion of waste streams from any portion of the industrial user's treatment facility.

275. Pursuant to 327 IAC 5-2-20, any violation of 327 IAC 5 may subject the person causing or contributing to said violation to administrative or judicial enforcement proceedings, and penalties.

276. Pursuant to 327 IAC 5-11-5(a)(1), any violation of pretreatment rules may subject the person causing or contributing to said violation to administrative or judicial enforcement proceedings, and penalties.

277. Pursuant to 327 IAC 5-11-7(a) (which incorporates the reporting requirements of 40 C.F.R. § 403.12) and 40 C.F.R. § 403.12(j), all industrial users are required to promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial users have submitted initial notification under 40 C.F.R. § 403.12(p).

278. Pursuant to 327 IAC 5-11-7(a) (which incorporates the reporting requirements of 40 C.F.R. § 403.12) and 40 C.F.R. § 403.12(f), all categorical and non-categorical industrial users are required to immediately notify the POTW of all discharges by the industrial user that could cause problems to the POTW, including any slug loadings, as defined by 40 C.F.R. § 403.5(b). Under 40 C.F.R. § 403.5(b), slug loadings include the discharge of any pollutant at a flow rate and/or pollutant concentration which will cause interference with the POTW.

279. Pursuant to 327 IAC 5-12-4, industrial users shall comply with applicable pretreatment standards and requirements adopted by [the State of Indiana].

280. Pursuant to Section 51.11(A) of the Ordinance, "[i]t shall be unlawful for any person or other legal entity to throw, run, drain, or otherwise dispose into any of the streams or public waters within the city or into any sewer or drain connected thereto any …chemicals … or any other organic or inorganic matter that shall cause or contribute to the pollution of such waters whereby the public health may be jeopardized, or whereby any lawful use of such waters may be lessened, impaired, or materially interfered with, … or whereby fish life or any other beneficial animal or vegetable life in the waters may be destroyed or the propagation thereof prevented or injuriously affected."

281. Pursuant to Section 51.51(A)(4) of the Ordinance, it is prohibited for an industrial user to discharge to the POTW "[a]ny wastewater containing pollutants … released in a discharge at a flow rate and/or pollutant concentration … which will constitute a hazard to humans or animals."

282. Pursuant to Section 51.51(A)(11) of the Ordinance, it is prohibited for an industrial user to discharge to the POTW "[a]ny gases, fluid, or solid containing objectionable or toxic substances in sufficient quantity, either alone or by interaction with other [sic] to … constitute a hazard to humans or animals."

283. Pursuant to Section 51.51(A)(11) of the Ordinance, no industrial user may contribute to the POTW "[a]ny gases, fluid, or solid containing objectionable or toxic substances in sufficient quantity, either alone or by interaction with other [sic] to injure or interfere with any wastewater treatment process."

284. Section 51.57(c) of the Ordinance requires that any changes in pretreatment facilities or methods which may change the quality or quantity of the pretreatment wastewater shall be reported to and be acceptable to the POTW and to all divisions of IDEM having jurisdiction.

285. Pursuant to Section 51.62(H) of the Ordinance, all industrial users subject to categorical pretreatment standards are required to report any planned increase or decrease in production at least two days prior to the planned change in production. No industrial user shall implement any significant planned change without a response to the request from the POTW.

286. Section 51.63(B) of the Ordinance requires the industrial user to report any discharges, including, but not limited to, accidental discharges, discharges of a non-routine episodic nature, a non-customary batch discharge, or a slug load which may cause potential problems for the POTW, including violation of the prohibited discharge standards in Section 51.51 of the Ordinance.

287. Part A of the Standard Permit Conditions of the Guide Wastewater Discharge Permit requires the permittee to notify the Anderson POTW of any significant change in water discharge rates within two (2) days after the decision to significantly modify wastewater discharge flow rates. Any flow changes or process changes, which will result in new, increased or different levels of pollutants and effluent violations must be reported to the Anderson POTW. The report must accompany a completed Wastewater Discharge Permit application.

288. Part B of the Standard Permit Conditions of the Guide Wastewater Discharge Permit requires the permittee to report any slug load or other noncompliance with the permit within 24 hours of discovery followed by a written report within 5 days of occurrence. “Slug” is

defined in Anderson's Ordinance as any single discharge episode of any toxic, conventional, or nonconventional pollutant of such volume or strength so as to cause interference to the POTW.

289. Part K of the Standard Permit Conditions of the Guide Wastewater Discharge Permit establishes that bypassing is regulated under the permit in accordance with 40 C.F.R. § 403.17.

290. The aforementioned provisions of the Ordinance, and the aforementioned provisions of the Guide Wastewater Discharge Permit, are deemed pretreatment standards and/or pretreatment requirements under 327 IAC 5-11-2 and/or 327 IAC 5-12-2(d), and as such, are enforceable by the State of Indiana pursuant to 327 IAC 5-11-5.

291. "Categorical pretreatment standards" under 327 IAC 5-12-3(a)(1) and 40 C.F.R. § 403.6, are the standards established for specific industrial subcategories by the USEPA, pursuant to sections 307(b) and (c) of the Clean Water Act (33 U.S.C. § 1317(b) and (c)), under 40 C.F.R. Chapter I, Subchapter N.

292. "Industrial user" is defined under 327 IAC 5-11-2 and 40 C.F.R. § 403.3(h) as a source of indirect discharges. An "indirect" discharge is defined under 327 IAC 5-11-2 as the discharge or introduction of pollutants from any non-domestic source subject to pretreatment standards or requirements under 327 IAC 5-12 into a POTW. An "indirect discharge" is defined under 40 C.F.R. § 403.3(g) as the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Clean Water Act, 33 U.S.C. § 1317(b), (c), or (d).

293. "Interference" under 40 C.F.R. § 403.3(i), 327 IAC 5-11-2, and Section 51.50 of the Ordinance, means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both: (1) inhibits or disrupts the POTW, its treatment processes or

operations, or its sludge processes, use or disposal; and (2) is a cause of a violation of any requirement of the POTW's National Pollutant Discharge Elimination System ("NPDES") permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal method selected by the POTW in compliance with specified statutory provisions and regulations or permits issued thereunder, or more stringent state or local regulations.

294. "Metal finishing point source category" under 40 C.F.R. Part 433, is a categorical pretreatment standard established by the USEPA under 40 C.F.R. Chapter I, Subchapter N, for plants that perform electroplating, electroless plating, anodizing, coating, chemical etching and milling, or printed circuit board manufacture. This categorical pretreatment standard has been adopted by reference into 327 IAC 5-12-6.

295. "Pass through", under 40 C.F.R. § 403.3(n), 327 IAC 5-11-2, and Section 51.50 of the Ordinance means a discharge which exits the POTW into waters of the state, in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

296. "Pretreatment requirement" under 327 IAC 5-11-2, is defined as any substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.

297. "Pretreatment standards" under 327 IAC 5-11-2 are defined as state pretreatment standards, as described in 327 IAC 5-12-4; pretreatment standards for prohibited discharges, as established in 327 IAC 5-12-2; and those national categorical pretreatment standards incorporated by reference in 327 IAC 5-12-6.

298. "Violation of pretreatment rules" pursuant to 327 IAC 5-11-5(c), includes the indirect discharges of pollutants in contravention of an applicable pretreatment standard or other applicable discharge limitation and the failure to comply with any other applicable limitation, and the failure to allow entry, inspection, and monitoring by departmental personnel when requested in accordance with applicable law or to carry out monitoring, recording, and reporting required under 327 IAC 5-11-1 through 327 IAC 5-15-12..

Nuisance

299. Pursuant to Ind. Code § 34-19-1, "Whatever is (1) injurious to health; . . . (3) offensive to the senses; or (4) an obstruction to the free use of property; so as essentially to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action," and an action to abate or enjoin a nuisance may be brought by any person whose: "(1) property is injuriously affected" by the nuisance.

Unlawful to Cause or Contribute to a Polluted Condition

300. Pursuant to Ind. Code § 13-18-4-5, a person may not throw, run, drain, or otherwise dispose into any of the streams or waters of Indiana; or cause, permit, or suffer to be thrown, run, drained, allowed to seep, or otherwise disposed into any waters; any organic or inorganic matter that causes or contributes to a polluted condition of any waters, as determined by a rule of the board adopted under sections 1 and 3 of this chapter.

Prohibition Against Discharge of Pollution That Violates Indiana Environmental Laws

301. Pursuant to Ind. Code § 13-30-2-1, a person may not discharge, emit, cause, allow, or threaten to discharge, emit, cause, or allow any contaminant or waste, including any noxious odor, either alone or in combination with contaminants from other sources, into: the

environment; or any publicly owned treatment works; in any form that causes or would cause pollution that violates or would violate rules, standards, or discharge, or emission requirements adopted by the appropriate board under the environmental management laws.

Unlawful Discharge

302. Pursuant to Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311, except as in compliance with Section 301(a) and Sections 302, 306, 307, 318, 402, 404 of this Act, the discharge of any pollutant by any person shall be unlawful.

Unpermitted Discharge

303. Pursuant to 327 IAC 5-2-2 "[a]ny discharges of pollutants into waters of the state as a point source discharge, except for exclusions made in 327 IAC 5-2-4, is prohibited unless in conformity with a valid NPDES permit obtained prior to the discharge."

Spills

304. A "spill" pursuant to 327 IAC 2-6.1-4(15), is defined as any "unexpected, unintended, abnormal, or unapproved dumping, leakage, drainage, seepage, discharge, or other loss of petroleum, hazardous substances, extremely hazardous substances, or objectionable substances."

305. "Hazardous substance" pursuant to 327 IAC 2-6.1-4(9), has the meaning set forth in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

306. "Objectionable substance" pursuant to 327 IAC 2-6.1-4(11), means substances that are or a quantity and type, and present for a duration and in a location, so as to damage waters of the state. This definition excludes hazardous substances, extremely hazardous substances, petroleum, and mixtures thereof.

307. Pursuant to 327 IAC 2-6.1-5 and 327 IAC 2-6.1-7, any person who operates, controls, or maintains any facility from which a spill occurs shall, upon discovery of a spill that damages the waters of the state so as to cause death or acute injury or illness to humans or animals: contain the spill, if possible, to prevent additional spilled material from entering the waters of the state; undertake or cause others to undertake activities needed to accomplish a spill response; as soon as possible, but within two (2) hours of discovery, communicate a spill report to the Department of Environmental Management; submit to IDEM, a written copy of the spill report if requested in writing by IDEM; and except from modes of transportation other than pipelines, exercise due diligence and document attempts to notify the following: for spills to surface water that cause damage, the nearest affected downstream water user located within ten (10) miles of the spill and in the State of Indiana; and for spills to soil outside the facility boundary, the affected property owner or owners, operator or operators, or occupant or occupants.

Surface Water Quality Standards

308. Pursuant to 327 IAC 2-1-2(1), "[f]or all waters of the state, the existing beneficial uses shall be maintained and protected. No degradation of water quality shall be permitted which would interfere with or become injurious to existing and potential uses."

309. Pursuant to 327 IAC 2-1-6(a)(1), all waters at all times and at all places, including the mixing zone, shall meet the minimum conditions of being free from substances, materials, floating debris, oil, or scum attributable to municipal, industrial, agricultural, and other land use practices, or other discharges that: (A) will settle to form putrescent or otherwise objectionable deposits; (B) are in amounts sufficient to be unsightly or deleterious; (C) produce color, visible oil sheen, odor, or other conditions in such degree as to create a nuisance; and, (D) are in amounts

sufficient to be acutely toxic to, or to otherwise severely injure or kill aquatic life, other animals, plants, or humans … ."

310. Pursuant to 327 IAC 2-1-6(a)(2), "[a]t all times, all waters outside of mixing zones shall be free of substances in concentrations which on the basis of available scientific data are believed to be sufficient to injure, be chronically toxic to, or be carcinogenic, mutagenic, or teratogenic to humans, animals, aquatic life, or plants."

GENERAL ALLEGATIONS

311. The "White River Site" includes an area along the White River approximately at or about the discharge point at the Anderson POTW, designated as outfall 001, to a point south of Indianapolis, Indiana, plus adjacent property owned by the POTW, and the adjoining shoreline and wetlands downstream of the Anderson POTW.

312. The Anderson Plant, the Anderson POTW, and the White River Site each is (or includes): a "facility" within the meaning of Section 9601(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A); and an "onshore facility" within the meaning of Section 311(a)(10) of the Clean Water Act, 33 U.S.C. § 1321(a)(10).

313. Defendants each are "person(s)." Section 502(5) of the Clean Water Act, 33 U.S.C., § 1362(5), Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), Ind. Code § 13-11-2-158(a), and Ind. Code § 14-8-2-202.

314. Defendants each are "owners or operators" as defined by Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A).

315. "Hazardous substances" (as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), Section 311(a)(14) of the Clean Water Act, 33 U.S.C. § 1321(a)(14), and Ind. Code § 13-11-2-98) have been released (within the meaning of Section 101(22) of CERCLA, 42 U.S.C.

§ 9601(22)) or discharged (within the meaning of Section 311(a)(2) of the Clean Water Act, 33 U.S.C. § 1321(a)(2) from the Anderson Plant to be located at the White River Site.

316. The White River is a "navigable water" and a "water of the United States" within the meaning of Section 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

317. The White River constitutes "waters" of the State within the meaning of Ind. Code § 14-8-2-306, Ind. Code § 13-11-2-265, and 327 IAC 2-1-9(47).

318. On or about October 1, 1988, IDEM issued an NPDES permit for the Anderson POTW, designated as NPDES Permit No. 0032476, under the authority conferred by the Clean Water Act § 402(b), 33 U.S.C.§ 1342(b) pursuant to Ind. Code 13-13-5-1, and 327 IAC 5. The Anderson NPDES Permit was amended on several occasions between 1988 and 1993. The Anderson NPDES Permit expired by its terms on July 30, 1993, but its terms and conditions have been administratively extended pursuant to 327 IAC 5-2-6(b), and remain in full force and effect.

319. On or about May 13, 1983, the City of Anderson issued the Ordinance governing wastewater discharges to the Anderson POTW. This Ordinance became part of a duly-authorized pretreatment program on or about February 6, 1986. Pursuant to 40 C.F.R. § 403.5(d), "[w]here specific prohibitions or limits on pollutants or pollutant parameters are developed by a publicly owned treatment works . . ., such limits shall be deemed Pretreatment Standards for the purposes of Section 307(d) of the Clean Water Act." Certain prohibitions set forth in the Ordinance constitute Pretreatment Standards, and as such are enforceable under Section 307 of the Clean Water Act, 33 U.S.C. § 1317. Certain provisions of the Ordinance are deemed pretreatment standards and/or pretreatment requirements under 327 IAC 5-11-2, and as such, are enforceable by the State of Indiana pursuant to 327 IAC 5-11-5.

320. The Guide Wastewater Discharge Permit issued by the City of Anderson in accordance with the Ordinance became effective on November 1, 1998, and authorizes the discharge of treated plating process wastewater from the Anderson Plant into Anderson's POTW, subject to effluent limitations, monitoring requirements, and other conditions set forth in the Guide Wastewater Discharge Permit. Pursuant to 40 C.F.R. § 403.5(d), "[w]here specific prohibitions or limits on pollutants or pollutant parameters are developed by a publicly owned treatment works . . ., such limits shall be deemed Pretreatment Standards for the purposes of Section 307(d) of the Clean Water Act." Certain prohibitions set forth in the Guide Wastewater Discharge Permit constitute Pretreatment Standards, and as such are enforceable under Section 307 of the Clean Water Act, 33 U.S.C. § 1317. Certain provisions of the Guide Wastewater Discharge Permit are deemed pretreatment standards and/or pretreatment requirements under 327 IAC 5-11-2, and as such, are enforceable by the State of Indiana pursuant to 327 IAC 5-11-5.

321. Ammonia, carbon disulfide, and thiram, each are hazardous substances under CERCLA and have been released from the Anderson Plant.

FIRST CLAIM FOR RELIEF

Natural Resource Damages

322. The allegations contained in Paragraphs 1 through 321 are incorporated herein by reference.

323. The releases of hazardous substances from the Anderson Plant have caused injury to, destruction of, or loss of natural resources, including surface water, fish and fishery resources at the White River Site.

324. The contamination of surface water of the White River resulting from the release of hazardous substances from the Anderson Plant has contributed significantly to the degradation

of habitat for fish and other aquatic life, to the continued decline of fishery resources, and to the impeded recovery of the fish and aquatic resources in the region.

325. Pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607; Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f); and Ind. Code § 13-25-4-8(a), Defendants are liable to the State of Indiana for all damages for injury to, destruction of, loss of or loss of use of, natural resources at the White River Site, including the reasonable costs of assessing the damage, resulting from the releases of hazardous substances, which releases or discharges have come to be located at the White River Site.

SECOND CLAIM FOR RELIEF

Hazardous Substances Response under CERCLA and Indiana Law

326. The allegations contained in Paragraphs 1 through 321 are incorporated herein by reference.

327. The White River Site is a “facility” under CERCLA at which hazardous substances are or were located. The White River Site is a “facility” owned or operated by a party other than the Defendants.

328. The Anderson POTW, and associated public works, are a “facility” under CERCLA at which hazardous substances are or were located. The Anderson POTW, and associated public works, are a “facility” under CERCLA owned or operated by a party other than the Defendants.

329. The Anderson Plant is a "facility" under CERCLA at which hazardous substances are or were located. Hazardous substances as defined by CERCLA and the Clean Water Act have been released from the Anderson Plant .

330. Defendants each are an owner and/or operator of the Anderson Plant.

331. Defendants each are persons who owned and/or operated the Anderson Plant at the time of disposal of hazardous substances.

332. Defendants each are persons who arranged for the disposal and/or treatment of hazardous substances owned or possessed by Defendants at the Anderson Plant.

333. Defendants each are persons who arranged for the disposal and/or treatment of hazardous substances, owned or possessed by Defendants, into the Anderson POTW. The disposal and/or treatment of hazardous substances by Defendants resulted in a release of hazardous substances into the White River Site, through the Anderson POTW.

334. The State has incurred costs in performing removal and remedial action in response to the release of hazardous substances from the Anderson Plant into the White River Site. The State has incurred costs of performing removal and remedial action because of the threat of release of hazardous substances from the Anderson Plant into the White River Site.

335. The State's response costs are consistent with the National Contingency Plan.

336. Defendants each are strictly liable to the State for the State's response costs.

337. Pursuant to Section 107 of CERCLA; 42 U.S.C. § 9607; and Ind. Code § 13-25-4-8(a), the Defendants each are jointly and severally liable to the State for the State's response costs.

THIRD CLAIM FOR RELIEF

Liability under Indiana's Emergency Assistance Law

338. The allegations contained in paragraphs 1 through 321 are incorporated herein by reference.

339. The commissioner of IDEM expended state funds in abating and remedying the discharge and impending discharge of contaminants from the Anderson Plant into the White River, and through the Anderson POTW.

340. The discharge and impending discharges of contaminants from the Anderson Plant into the White River, through the Anderson POTW, constituted an emergency and an imminent and substantial danger to public health or the environment.

341. The commissioner's response must have been immediate to have been efficacious.

342. For at least some of the time during the emergency response, the person(s) responsible for abatement or remedying the emergency could not be determined or located.

343. For at least some of the time during the emergency response, Defendants refused or failed to take prompt and effective action to abate or remedy the emergency.

344. Defendants are persons responsible for the emergency caused by the discharge and impending discharge of contaminants from the Anderson Plant into the White River through the Anderson POTW.

345. Pursuant to Ind. Code § 13-14-10 *et seq.*, Defendants are responsible for the repayment of the commissioner's cost of assistance provided in response to the discharge and impending discharge of contaminants from the Anderson Plant into the White River through the Anderson POTW.

FOURTH CLAIM FOR RELIEF

Unpermitted Discharge

346. The allegations contained in Paragraphs 1 through 321 are incorporated herein by reference.

347. On multiple occasions during December of 1999, the Defendants discharged a variety of pollutants from a point source to the White River, through the Anderson POTW, without the authority to do so under the Clean Water Act or state law. The pollutants that Defendants unlawfully discharged included, but were not limited to: sodium dimethyldithiocarbamate and certain other compounds formed from the chemical, such as carbon disulfide, dimethylamine, thiram, and other thiurams.

348. Defendants' unauthorized discharges of pollutants to the White River through the Anderson POTW violated: Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a); Ind. Code § 13-30-2-1; and 327 IAC 5-2-2.

349. Each day that the Defendants discharged each unauthorized pollutant constitutes a separate day of violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a); Ind. Code § 13-30-2-1; and 327 IAC 5-2-2.

350. Pursuant to Ind. Code § 13-30-4-1, Ind. Code § 13-14-2-6, and 327 IAC 5-2-20, the Defendants are subject to injunctive relief and liable for civil penalties of up to $25,000 per day for each violation of state law and its implementing rules, and pursuant to Sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. § 1319(b) and (d), Defendants are subject to injunctive relief and liable for civil penalties of up to $27,500 per day for each day of violation of the Clean Water Act and its implementing regulations.

FIFTH CLAIM FOR RELIEF

Pass Through of Pollutants Through the Anderson POTW

351. The allegations contained in Paragraphs 1 through 321 are incorporated herein by references.

352. On multiple occasions during December 1999, the Defendants discharged effluent to the Anderson POTW which contained pollutants that exited the Anderson POTW and caused one or more violations of the Anderson NPDES Permit. The pollutants discharged by the Defendants which exited the Anderson POTW included, but were not limited to, sodium dimethyldithiocarbamate and certain other compounds formed from the chemical, such as carbon disulfide, dimethylamine, thiram, and other thiurams.

353. Defendants' discharges of pollutants to the Anderson POTW, which exited the Anderson POTW and caused one or more violations of the Anderson NPDES Permit, constituted "pass through."

354. Defendants' discharges of pollutants to the Anderson POTW, that passed through the Anderson POTW to the White River violated: Section 307(d) of the Clean Water Act, 33 U.S.C. § 1317(d); 40 C.F.R. § 403.5(a)(1); 327 IAC 5-12-2(a)(1); and Section 51.51 of the Ordinance.

355. Each day that Defendants discharged pollutants which passed through the Anderson POTW constitutes a separate day of violation of Section 307(d) of the Clean Water Act, 33 U.S.C. § 1317(d); 40 C.F.R. § 403.5(a)(1); 327 IAC 5-12-2(a)(1); and Section 51.51 of the Ordinance.

356. Pursuant to Ind. Code § 13-30-4-1, Ind. Code § 13-14-2-6, 327 IAC 5-11-5(a)(1), and 327 IAC 5-2-20, the Defendants are subject to injunctive relief and liable for civil penalties of up to $25,000 per day for each violation of state law and its implementing rules, and pursuant to Sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. § 1319(b) and (d), Defendants are subject to injunctive relief and liable for civil penalties of up to $27,500 per day for each day of violation of the Clean Water Act and its implementing regulations.

SIXTH CLAIM FOR RELIEF

Discharge of Pollutants Causing Interference with Anderson POTW

357. The allegations contained in Paragraphs 1 through 321 are incorporated herein by reference.

358. On multiple occasions in December of 1999, the Defendants discharged effluent into the Anderson POTW which contained pollutants which inhibited or disrupted the Anderson POTW, its treatment processes, or operations, thereby causing one or more violations of the Anderson NPDES Permit. The pollutants discharged by the Defendants to the Anderson POTW included, but were not limited to, sodium dimethyldithiocarbamate and certain other compounds formed from the chemical, such as carbon disulfide, dimethylamine, thiram, and other thiurams.

359. The Defendants' discharges of pollutants to the Anderson POTW which inhibited or disrupted the Anderson POTW, its treatment processes, or operations and caused one or more violations of the Anderson NPDES permit constituted "interference."

360. The Defendants' interference with the Anderson POTW violated: Section 307(d) of the Clean Water Act, 33 U.S.C. § 1317(d); 40 C.F.R. §§ 403.5(a)(1) and 403.5(b)(4); 327 IAC 5-12-2(a)(1), 327 IAC 5-12-2(b)(4); and Section 51.51 of the Ordinance.

361. Each day that Defendants discharged pollutants which caused interference with the Anderson POTW constitutes a separate day of violation of Section 307(d) of the Clean Water Act, 33 U.S.C. § 1317(d); 40 C.F.R. §§ 403.5(a)(1) and 403.5(b)(4); 327 IAC 5-12-2(a)(1); 327 IAC 5-12-2(b)(4), and Section 51.51 of the Ordinance.

362. Pursuant to Ind. Code § 13-30-4-1, Ind. Code § 13-14-2-6, 327 IAC 5-11-5(a)(1), and 327 IAC 5-2-20, the Defendants are subject to injunctive relief and liable for civil penalties of up to $25,000 per day for each violation of state law and its implementing rules, and pursuant to

Sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. § 1319(b) and (d), Defendants are subject to injunctive relief and liable for civil penalties of up to $27,500 per day for each day of violation of the Clean Water Act and its implementing regulations.

SEVENTH CLAIM FOR RELIEF

Violation of Water Quality Standards

363. The allegations contained in Paragraphs 1 through 321 are incorporated herein by reference.

364. On multiple occasions during December 1999, the Defendants discharged pollutants into the White River, through the Anderson POTW, which were deleterious and toxic to fish and which killed over 117 tons of fish in the White River. The discharges which Defendants introduced into the White River, through the Anderson POTW, contained a variety of chemicals, including, but not limited to, sodium dimethyldithiocarbamate and certain other compounds formed from the chemical, such as carbon disulfide, dimethylamine, thiram, and other thiurams.

365. Defendants' discharges of pollutants which were deleterious and toxic to fish violated Section 307(d) of the Clean Water Act, 33 U.S.C. § 1317(d); Ind. Code § 13-18-4-5; Ind. Code § 13-30-2-1; 327 IAC 2-1-2(1); 327 IAC 2-1-6(a); and Sections 51.11 and 51.51 of the Ordinance.

366. Each day that Defendants' discharges of pollutants caused harm to fish constitutes a separate day of violation of Section 307(d) of the Clean Water Act, 33 U.S.C. § 1317(d); Ind. Code § 13-18-4-5; Ind. Code § 13-30-2-1; 327 IAC 2-1-2(1); 327 IAC 2-1-6(a); and Sections 51.11 and 51.51 of the Ordinance.

367. Pursuant to Ind. Code § 13-30-4-1, Ind. Code § 13-14-2-6, and 327 IAC 5-2-20, the Defendants are subject to injunctive relief and liable for civil penalties of up to $25,000 per day for each violation of state law and its implementing rules, and pursuant to Sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. § 1319(b) and (d), Defendants are subject to injunctive relief and liable for civil penalties of up to $27,500 per day for each day of violation of the Clean Water Act and its implementing regulations.

EIGHTH CLAIM FOR RELIEF

Failure to Provide Notification of Changes in Production

368. The allegations contained in Paragraphs 1 through 321 are incorporated herein by reference.

369. The Defendants did not provide the Anderson POTW with prior notification of the increase in the Anderson Plant's metal plating production in the summer of 1999, or prior notification of the Anderson Plant's cessation of plating activity and/or the planned initiation of decontamination of the plating facilities in September 1999.

370. Defendants' failures to provide such notices to the Anderson POTW are violations of Section 307(d) of the Clean Water Act, 33 U.S.C. § 1317(d); and Section 51.62(H) of the Ordinance.

371. Each day that the Defendants violated the aforementioned notification requirement constitutes a separate day of violation of Section 307(d) of the Clean Water Act, 33 U.S.C. § 1317(d); and Section 51.62(H) of the Ordinance.

372. Pursuant to Ind. Code § 13-30-4-1, Ind. Code § 13-14-2-6, 327 IAC 5-11-5(a)(1), and 327 IAC 5-2-20, the Defendants are subject to injunctive relief and liable for civil penalties of up to $25,000 per day for each violation of state law and its implementing rules, and pursuant to

Sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. § 1319(b) and (d), Defendants are subject to injunctive relief and liable for civil penalties of up to $27,500 per day for each day of violation of the Clean Water Act and its implementing regulations.

NINTH CLAIM FOR RELIEF

Failure to Provide Notification to, and Obtain Approval From, IDEM and the Anderson POTW for Process and Treatment Changes

373. The allegations contained in Paragraphs 1 through 321 are incorporated herein by reference.

374. Defendants did not notify the Anderson POTW or IDEM that changes were made in the Anderson Plant's wastewater treatment plant's facilities and methods which might change the quality or quantity of the pretreatment wastewater.

375. Defendants did not obtain approval from the Anderson POTW or IDEM for changes being made at the Anderson Plant's wastewater treatment plant's facilities and methods which might change the quality or quantity of the Guide wastewater treatment plant's wastewater.

376. The Defendants' failure to provide such notices and obtain such approvals from IDEM and the Anderson POTW are violations of Section 307(d) of the Clean Water Act, 33 U.S.C. § 1317(d); Section 51.57 of the Ordinance, and pertinent provisions of the Guide Wastewater Discharge Permit.

377. Each day that the Defendants violated the aforementioned notification and approval requirements constitutes a separate day of violation of Section 307(d) of the Clean Water Act, Section 307(d), 33 U.S.C. § 1317(d); and Section 51.62(H) of the Ordinance.

378. Pursuant to Ind. Code § 13-30-4-1, Ind. Code § 13-14-2-6, 327 IAC 5-11-5(a)(1), and 327 IAC 5-2-20, the Defendants are subject to injunctive relief and liable for civil penalties of

up to $25,000 per day for each violation of state law and its implementing rules, and pursuant to Sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. § 1319(b) and (d), Defendants are subject to injunctive relief and liable for civil penalties of up to $27,500 per day for each day of violation of the Clean Water Act and its implementing regulations.

TENTH CLAIM FOR RELIEF

Failure to Notify Anderson POTW of Changes in the Volume or Character of Pollutants Discharged to the POTW

379. The allegations contained in Paragraphs 1 through 321 are incorporated herein by reference.

380. Defendants did not notify the Anderson POTW of changes in the volume and character of pollutants contained in the discharges from the Anderson Plant's wastewater treatment plant after September 1999, due to the changes in the wastewater received by the Guide wastewater treatment plant and changes in the methods used for pretreatment of the wastewater.

381. Defendants' failure to provide such notices are violations of Section 307(d) of the Clean Water Act, 33 U.S.C. § 1317(d); 327 IAC 5-11-7(a), Section 51.57 of the Ordinance, and pertinent provisions of the Guide Wastewater Discharge Permit.

382. Each day that the Defendants violated the aforementioned notification requirements constitutes a separate day of violation of Section 307(d) of the Clean Water Act, 33 U.S.C. § 1317(d); 40 C.F.R. § 403.12(j), 327 IAC 5-11-7(a), Section 51.57 of the Ordinance, and pertinent provisions of the Guide Wastewater Discharge Permit.

383. Pursuant to Ind. Code § 13-30-4-1, Ind. Code § 13-14-2-6, 327 IAC 5-11-5(a)(1), and 327 IAC 5-2-20, the Defendants are subject to injunctive relief and liable for civil penalties of up to $25,000 per day for each violation of state law and its implementing rules, and pursuant to

Sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. § 1319(b) and (d), Defendants are subject to injunctive relief and liable for civil penalties of up to $27,500 per day for each day of violation of the Clean Water Act and its implementing regulations.

ELEVENTH CLAIM FOR RELIEF

Failure to Notify Anderson POTW of Discharges That Could Cause Problems for the POTW

384. The allegations contained in Paragraphs 1 through 321 are incorporated herein by reference.

385. Defendants did not notify the Anderson POTW that discharges from the Guide Wastewater treatment plant after September 1999 could cause problems for the POTW.

386. Defendants' failure to provide such notices are violations of Section 307(d) of the Clean Water Act, 33 U.S.C. § 1317(d); 40 C.F.R. § 403.12(f), 327 IAC 5-11-7(a), Section 51.63 of the Ordinance, and pertinent provisions of the Guide Wastewater Discharge Permit.

387. Each day that the Defendants violated the aforementioned notification requirements constitutes a separate day of violation of Section 307(d) of the Clean Water Act, 33 U.S.C. § 1317(d); 40 C.F.R. § 403.12(j), 327 IAC 5-11-7(a), Section 51.57 of the Ordinance, and pertinent provisions of the Guide Wastewater Discharge Permit.

388. Pursuant to Ind. Code § 13-30-4-1, Ind. Code § 13-14-2-6, 327 IAC 5-11-5(a)(1), and 327 IAC 5-2-20, the Defendants are subject to injunctive relief and liable for civil penalties of up to $25,000 per day for each violation of state law and its implementing rules, and pursuant to Sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. § 1319(b) and (d), Defendants are subject to injunctive relief and liable for civil penalties of up to $27,500 per day for each day of violation of the Clean Water Act and its implementing regulations.

TWELFTH CLAIM FOR RELIEF

Failure to Contain Spills, Respond to the Spills and Report the Spills to IDEM

389. The allegations contained in Paragraphs 1 through 321 are incorporated herein by reference.

390. During the month of December 1999, Defendants' multiple abnormal and unapproved discharges of hazardous and objectionable substances to the White River, through the Anderson POTW, damaged the White River and killed over 117 tons of fish. Such discharges constitute "spills" under 327 IAC 2-6.1.

391. Defendants did not contain the spills so as to prevent additional spilled material from reaching waters of the State.

392. Defendants did not undertake or cause others to undertake the activities needed to accomplish a response to these spills.

393. Defendants did not communicate spill reports regarding these spills to IDEM.

394. Defendants' failure to contain the spilss so as to prevent the release of additional spilled material, failure to undertake the actions necessary to respond to the spill and failure to provide the required spill report to IDEM are violations of 327 IAC 2-6.1-5 and 327 IAC 2-6.1-7.

395. Each day that Defendants violated the aforementioned containment, response and reporting requirements constitutes a separate day of violation of 327 IAC 2-6.1-5 and 327 IAC 2-6.1-7.

396. Pursuant to Ind. Code § 13-30-4-1 and Ind. Code § 13-14-2-6, the Defendants are subject to injunctive relief and liable for civil penalties of up to $25,000 per day of violation for each of the Defendants' violations of 327 IAC 2-6.1-5 and 327 IAC 2-6.1-7.

THIRTEENTH CLAIM FOR RELIEF

Prohibited Bypass of Clarifier

397. The allegations contained in Paragraphs 1 through 321 are incorporated herein by reference.

398. On or about November 26, 1999, Defendants began bypassing the clarifier.

399. Defendants failed to satisfy the conditions set forth in Section 51.562 of the Ordinance, and 40 C.F.R. § 403.17 and, therefore, the bypass of the clarifier was prohibited.

400. Defendants' prohibited bypass of the clarifier violates Section 307(d) of the Clean Water Act, 33 U.S.C. § 1317(d); 40 C.F.R. § 403.17, Section 51.562 of the Ordinance and pertinent provisions of the Guide Wastewater Discharge Permit.

401. Each day that Defendants bypassed the clarifier constitutes a separate day of violation of Section 307(d) of the Clean Water Act, 33 U.S.C. § 1317(d); 40 C.F.R. § 403.17, Section 51.562 of the Ordinance and pertinent provisions of the Guide Wastewater Discharge Permit.

402. Pursuant to Ind. Code § 13-30-4-1, Ind. Code § 13-14-2-6, 327 IAC 5-11-5(a)(1), and 327 IAC 5-2-20, the Defendants are subject to injunctive relief and liable for civil penalties of up to $25,000 per day for each violation of state law and its implementing rules, and pursuant to Section 309(b) of the Clean Water Act Section, 33 U.S.C. § 1319(b) and (d), Defendants are subject to injunctive relief and liable for civil penalties of up to $27,500 per day for each day of violation of the Clean Water Act and its implementing regulations.

FOURTEENTH CLAIM FOR RELIEF

Violation of Guide Wastewater Discharge Permit Limitation for Chromium

403. The allegations contained in Paragraphs 1 through 321 are incorporated herein by reference.

404. The Guide Wastewater Discharge Permit establishes a monthly average limitation for chromium of 1.71 milligrams per liter (mg/l) and a daily maximum limitation for chromium of 2.5 mg/l.

405. The above-referenced limitations are categorical pretreatment standards, in the Metal finishing point source category, that were established by the USEPA under 40 C.F.R. Part 433, and are deemed pretreatment standards under 40 C.F.R. § 403.5(d), 327 IAC 5-11-2, and 327 IAC 5-12-2(d).

406. On one or more days during the month of November 1999, Defendants exceeded the daily maximum limitation for chromium that was contained in the Guide Wastewater Discharge Permit.

407. Defendants' violations of the daily maximum limitation for chromium violated Section 307(d) of the Clean Water Act, 33 U.S.C. § 1317(d); Ind. Code § 13-30-2-1(1); 327 IAC 5-12-4, and pertinent provisions of the Guide Wastewater Discharge Permit.

408. Each day that Defendants discharged chromium at a level that exceeded the daily maximum permit limitation for chromium constitutes a separate day of violation of Section 307(d) of the Clean Water Act, 33 U.S.C. § 1317(d); Ind. Code § 13-30-2-1(1); 327 IAC 5-12-4, and pertinent provisions of the Guide Wastewater Discharge Permit.

409. Pursuant to Ind. Code § 13-30-4-1, Ind. Code § 13-14-2-6, 327 IAC 5-11-5(a)(1), and 327 IAC 5-2-20, the Defendants are subject to injunctive relief and liable for civil penalties of

up to $25,000 per day for each violation of state law and its implementing rules, and pursuant to Sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. § 1319(b) and (d), Defendants are subject to injunctive relief and liable for civil penalties of up to $27,500 per day for each day of violation of the Clean Water Act and its implementing regulations.

FIFTEENTH CLAIM FOR RELIEF

Denial of Access

410. The allegations contained in Paragraphs 1 through 321 are incorporated herein by reference.

411. On or about January 10, 2000, an authorized IDEM representative attempted to gain access to the Anderson Plant for the purpose of conducting an inspection, but was refused entry. Additionally, on or about January 12, 2000, an authorized IDEM representatives attempted to gain access to the Anderson Plant for the purpose of conducting an inspection and were refused entry.

412. Defendants' failures to allow entry are violations of Ind. Code § 13-14-2-2 and 327 IAC 5-11-5(5).

413. Each day that Defendants failed to allow entry constitutes a separate day of violation of Ind. Code § 13-14-2-2 and 327 IAC 5-11-5(5).

414. Pursuant to Ind. Code § 13-30-4-1, Ind. Code § 13-14-2-6, 327 IAC 5-11-5(a)(1), and 327 IAC 5-2-20, the Defendants are subject to injunctive relief and liable for civil penalties of up to $25,000 per day for each violation of state law and its implementing rules.

SIXTEENTH CLAIM FOR RELIEF

Failure to Montior Flow

415. The allegations contained in Paragraphs 1 through 321 are incorporated herein by reference.

416. Part I.A.1. of the Guide Wastewater Discharge Permit sets forth the monitoring requirements and effluent limitations applicable to the discharge of categorically regulated process wastewater from the Anderson Plant's wastewater treatment plant. The monitoring requirements include the requirement to monitor the volume of effluent flow and the requirement to take composite samples for the following parameters: cadmium, chromium, copper, lead, nickel, silver, zinc, and total toxic organics.

417. Part I.A.1(1) of the Guide Wastewater Discharge Permit states that the Guide Corporation "treatment plant effluent channel" shall be the sample site for all pollutants except total cyanide.

418. Part I.A.1(3) of the Guide Wastewater Discharge Permit requires that composite samples be "flow proportional" daily composite samples collected over the daily discharge period.

419. Inspections of the Anderson Plant and Defendants' records revealed that Defendants were not monitoring the volume of its effluent flow at the treatment plant effluent channel and, therefore, not collecting flow proportional composite samples as required, due to the fact that the flow monitoring device located in the treatment plant effluent channel was not functioning.

420. Defendants' failures to monitor, record, and report flow as required are violations of Section 307(d) of the Clean Water Act, 33 U.S.C. § 1317(d), and pertinent provisions of the Guide Wastewater Discharge Permit.

421. Each day that the Defendants violated the aforementioned monitoring, recording, and reporting requirements constitute a separate day of violation of Section 307(d) of the Clean Water Act, 33 U.S.C. § 1317(d); and pertinent provisions of the Guide Wastewater Discharge Permit.

422. Pursuant to Ind. Code § 13-30-4-1, Ind. Code § 13-14-2-6, 327 IAC 5-11-5(a)(1), and 327 IAC 5-2-20, the Defendants are subject to injunctive relief and liable for civil penalties of up to $25,000 per day for each violation of state law and its implementing rules, and pursuant to Sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. § 1319(b) and (d), Defendants are subject to injunctive relief and liable for civil penalties of up to $27,500 per day for each day of violation of the Clean Water Act and its implementing regulations.

SEVENTEENTH CLAIM FOR RELIEF

Destruction of Wild Animals by Pollutant

423. The allegations contained in Paragraphs 1 through 321 are incorporated herein by reference.

424. Pursuant to Ind. Code § 14-3-1(11)(a)(2), DNR possesses the statutory duty to: "… secure the enforcement of laws for the conservation and development of the natural resources of the State."

425. Pursuant to Ind. Code § 14-2-1-1, DNR has "the authority and responsibility to protect and properly manage the fish and wildlife resources of the State."

426. Ind. Code § 14-22-10-6, provides in pertinent part that "[a] person who, whether or not the person has been issued a certificate of approval, license, permit, or other document of approval authorized by this article or any other Indiana law, discharges, sprays, or releases waste materials, chemicals, or other substances: either accidentally, negligently, or willfully; in any quantity, concentration, or manner onto or in any water of Indiana, the boundary waters of the

State, or onto or in public or private land; and so that wild animals are killed as a result; is responsible for the kill. The director shall, in the name of the state, recover damages from the person."

427. Pursuant to Ind. Code § 14-8-2-202, Defendants are persons for purposes of Ind. Code § 14-22-10-6.

428. Pursuant to Ind. Code §§ 14-8-2-7 and 14-8-2-318, fish are wild animals for purposes of Ind. Code § 14-22-10-6.

429. Pursuant to Ind. Code § 14-8-2-307, the White River is a water of Indiana.

430. The Indiana Department of Natural Resources provided notice to Defendants of the damages to the natural resources, and provided Defendants the opportunity to discuss settlement of this matter, but no settlement has been reached.

431. The discharges, spray, and/or release of waste materials, chemicals, or other substances by Defendants from the Anderson Plant have entered the White River and caused the death of numerous fish in violation of Ind. Code § 14-22-10-6.

432. Pursuant to Ind. Code § 14-22-10-6, Defendants are liable to the State of Indiana for damages resulting from the destruction of the wild animals killed in violation of Ind. Code § 14-22-10-6.

EIGHTEENTH CLAIM FOR RELIEF

Public Nuisance

433. The allegations contained in Paragraphs 1 through 321 are incorporated herein by reference.

434. On multiple occasions during December 1999, the Defendants discharged effluent to the White River, through the Anderson POTW, which contained high levels of toxic pollutants,

including, but not limited to, sodium dimethyldithiocarbamate and certain other compounds formed from the chemical, such as carbon disulfide, dimethylamine, thiram, and other thiurams.

435. These discharges of pollutants resulted in unreasonably detrimental impacts upon the aquatic life and unreasonable interference with the public use and enjoyment thereof, thereby creating a public nuisance.

436. These toxic discharges caused or contributed to the polluted condition of the White River, were deleterious, and were in amounts sufficient to be acutely toxic to, or otherwise severely injure or kill aquatic life, other animals or plants.

437. Defendants' unauthorized toxic discharges interfered with the public use and enjoyment of the White River and, therefore, violated numerous provisions of federal and state law, and the Ordinance, including Ind. Code § 34-19-1, Ind. Code § 13-18-4-5, 327 IAC 2-1-6(a), Section 51.11(A) of the Ordinance.

438. Pursuant to Ind. Code § 34-19-1 and Ind. Code § 13-14-2-6, the Defendants are subject to injunctive relief and liable for all damages arising from said public nuisance.

NINETEENTH CLAIM FOR RELIEF

Negligence

439. The allegations contained in Paragraphs 1 through 321 are incorporated herein by reference.

440. Defendants owed a duty to the State of Indiana to operate the Anderson Plant in a manner that prevented the discharge of toxic pollutants to the Anderson POTW or to the White River, and to otherwise exercise reasonable care in the performance of their respective activities.

441. On multiple occasions during December 1999, the Defendants discharged effluent to the White River, through the Anderson POTW, which contained high levels of toxic pollutants,

including, but not limited to, sodium dimethyldithiocarbamate and certain other compounds formed from the chemical, such as carbon disulfide, dimethylamine, thiram, and other thiurams.

442. Defendants' discharges of toxic pollutants constitutes a breach of their respective duties of care.

443. Defendants' discharges of toxic pollutants proximately caused substantial harm to the White River and resulted in the death of over 117 tons of fish.

444. Defendants' unauthorized discharges violated numerous provisions of federal and state law, and the Ordinance, including Ind. Code § 13-18-4-5, 327 IAC 2-1-6(a), Section 51.11(A) of the Ordinance and constitutes negligence, including negligence *per se*.

445. Pursuant to Ind. Code § 13-14-2-6 and common law, Defendants are subject to injunctive relief and liable for damages arising from their negligent conduct.

TWENTIETH CLAIM FOR RELIEF

Negligent Trespass

446. The allegations contained in Paragraphs 1 through 445 are incorporated herein by reference.

447. On multiple occasions during December 1999, the Defendants discharged effluent to the White River, through the Anderson POTW, which contained high levels of toxic pollutants, including, but not limited to, sodium dimethyldithiocarbamate and certain other compounds formed from the chemical, such as carbon disulfide, dimethylamine, thiram, and other thiurams.

448. Defendants' toxic discharges wrongfully entered the White River, causing harm to the White River and to other natural resources of the State.

449. Defendants' discharges caused substantial harm to the White River and resulted in the death of over 117 tons of fish.

450. Defendants' unauthorized toxic discharges into waters of the State constitute a negligent trespass.

451. Defendants are liable to the State of Indiana for all damages proximately caused by Defendants' negligent trespass.

JURY DEMAND

Plaintiff requests a jury trial on all issues triable by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, State of Indiana, respectfully requests the Court:

A. To find Defendants liable, jointly and severally, for all damages that have resulted or will result from injury to, destruction of, or loss of natural resources at the White River Site, and all reasonable costs incurred or to be incurred by the State of Indiana in assessing such injury to, destruction of, or loss of natural resources, including enforcement costs, and order Defendants, jointly and severally, to pay all such costs together with prejudgment and postjudgment interest;

B. To order Defendants to restore all natural resources damaged to their baseline condition and to compensate the State for all damages which have resulted from the injury to, destruction of, or loss of natural resources at the White River Site, including, but not limited to, the cost of replacing all lost natural resources, loss of use of the natural resources and all other compensable losses allowed in CERCLA, the Clean Water Act and Indiana Code 14-22-10-6 for damages for injury to natural resources;

C. To find Defendants liable, jointly and severally, for costs incurred by the State in performing removal and remediation action in response to the release of hazardous substances and/or the threat of release of hazardous substances from the Anderson Plant to the White River

and order Defendants, jointly and severally, to pay all such costs together with prejudgment and post judgment interest;

D. To find Defendants, jointly and severally, responsible for the emergency caused by the discharge and impending discharges of contaminants from the Anderson Plant to the Anderson POTW and ultimately into the White River and order Defendants to repay the commissioner's cost of assistance provided in response to the discharge and impending discharges of contaminants from the Anderson Plant into the Anderson POTW and ultimately into the White River.

E. To find Defendants liable, jointly and severally, for violations of the Indiana Environmental Management Law, Ind. Code Title 13, and the rules promulgated thereunder, the Clean Water Act, the Anderson Ordinance, and the Guide Wastewater Discharge Permit;

F. To enjoin Defendants from all future wastewater discharges from the Anderson Plant, except as authorized by the Clean Water Act, the Guide Waster Discharge Permit, and applicable statutes and ordinances;

G. To assess a civil penalty against each Defendant in an amount equal to, but not to exceed, the maximum amount allowed under applicable federal and state law for each violation of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, together with the rules promulgated thereunder, Indiana Environmental laws codified at Ind. Code Title 13, together with rules promulgated thereunder, the Anderson Ordinance, and the Guide Wastewater Discharge Permit.

H. To assess damages against Defendants in an amount equal to all damages arising from Defendants' creation of a public nuisance, Defendants' negligent conduct and Defendants' negligent trespass;

I. To order Defendants to reimburse Plaintiffs for all attorney fees and costs of the investigation, together with all expenses incurred by the Plaintiff in pursuing this lawsuit, including, but not limited to, expert witness and consultants' fees, to the extent allowed under applicable law; and,

J. Grant such additional relief as is equitable and appropriate.

Respectfully submitted,

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

By:_____
Lori F. Kaplan, Commissioner

INDIANA DEPARTMENT OF NATURAL RESOURCES

By:_____
Larry D. Macklin, Director

INDIANA NATIONAL RESOURCES CO-TRUSTEES

By:_____
Elizabeth Admire, Chief of Staff
Indiana Department of Environmental Management

By:_____
Carrie Doehrmann, Chief of Staff
and General Counsel
Indiana Department of Natural Resources

JOHNSON, SMITH, PENCE & HEATH, LLP

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